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Table 5
Project Categories and their Anticipated Long-Term Relationship to GHG Emissions

Added Capacity Projects	Example Projects (in no particular order)	GHGs
Mixed Flow Capacity Addition	Additional lanes (incl certain types of auxiliary) Tolled roads (mixed use)	Increasing likelihood of GHG increases → / ← Increasing likelihood of GHG reductions
Traffic Operations	Operational improvements (ramp metering, signal improvements, turn lanes, auxiliary lanes) Traffic management systems Truck lanes (climbing, separated flow) Elimination of at-grade rail crossings	
Enhancement and Capacity Additions for Alternative Modes	Bike facilities Pedestrian facilities Park & Ride (carpool) Tolled lanes (high occupancy restricted) HOV lane additions/enhancements	
Transit	Rail Bus Ferry Transit infrastructure (stops, waiting areas) Bus rapid transit Park & Ride (transit)	
Non-Capacity Added Projects	**Example Projects (in no particular order)**	**GHGs**
Maintenance, Rehabilitation, Preservation	Pavement preservation Pavement rehabilitation and maintenance Stormwater/drainage	Long-term neutral Impacts without innovation
Neutral/Other	Bridge preservation Bridge rehabilitation Bridge replacement Facilities preservation Facilities rehabilitation Facilities replacement Damage restoration Safety improvements Landscaping, Sound Walls	

Source: California Department of Transportation, Prioritization of Transportation Projects for Economic Stimulus with Respect to Greenhouse Gases, Final, June 20, 2009, Table 1 (Project Categories and their Anticipated Long-Term Relationship to GHG Emissions), p. 8.

Information from Caltrans' independent analysis serves to refute other statements presented in the DEIR/S, namely that "[t]o the extent that a project relieves congestion by enhancing operations and improving travel times in high-congestion travel corridors, GHG emissions, particularly CO_2, may be reduced" (p. 4-55). In support of that statement, the Lead Agency includes a graph (Figure 4.2) extracted from a single-page article (i.e., "Traffic Congestion and Greenhouse Gases: Matthew Barth and Konok Boriboonsomsin," p. 4-55) and included a web-link to that article. Noticeably absent from the DEIR/S analysis and the referenced graphic are the authors' own admonition. The cited study notes that different traffic management techniques (i.e., congestion mitigation increasing average traffic speeds from those under heavily congested conditions; speed management reducing high speeds to safer speeds; and traffic smoothing reducing the number and intensity of accelerations and decelerations) could affect CO_2 emissions "as long as travel demand does not increase because of the improved traffic flow." The Lead Agency's own analysis (e.g., "the proposed project is intended to add capacity ", p. 3.6-10) refutes any emission reduction benefits.

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In its substantially broader analysis of GHG emissions, Caltrans concluded: "Traditional transportation-related air quality assessments focus on several principles, some of which remain applicable in the GHG context. A key concept is the relationship, for a given point in time, between vehicle emissions and travel speeds. In general, stop-and-go traffic produces high emission rates for virtually all vehicle types and traditional urban-scale pollutants such as hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NOx). Per-vehicle emissions of urban-scale pollutants decline as traffic flow improves until, at very high speeds (e.g., 60+ mph), emission rates increase again. Vehicular CO_2 emissions follow a similar pattern. Road congestion that significantly reduces speeds or increases engine loads will also increase emissions. A key disconnect between traditional urban-scale pollutants and CO_2, however, lies in the understanding that although emissions of traditional pollutants of interest (HC, CO, and NOx) have declined substantially in recent decades as vehicle technology has improved, CO_2 emissions are governed by fuel economy, which has remained static over time. Thus, holding fuel consumption per mile driven as a constant, any increase in VMT results in increased CO_2" (p. 9).

The above referenced study further notes that "[t]he literature separates short and long-term impacts, and identifies factors that influence how new capacity alters travel speeds, trip generation, mode choice, travel distance, and time-of-day travel choices. The National Research Council [NRC] found major highway capacity additions increase emissions over the long run, particularly in growing, less developed areas where capacity increases attract further development. NRC noted that in developed areas, traffic flow improvements such as left turn lanes and signal timing may reduce emissions without risking related traffic growth. More recent literature reviews also document a positive correlation between increased lane-miles of capacity and increased daily VMT; California-based analyses corroborate this link.[Footnote] Increased travel activity contradicts the AB 32 Scoping Plan, which envisions that by year 2030, control strategies will achieve an eight percent reduction in per-capita VMT from BAU [business as usual] conditions" (Project Category Description, Mixed Flow Capacity Addition).

The "footnote" cited by Caltrans is to Robert Cervero's and Mark Hansen's "Induced Travel Demand and Induced Road Investment, A Simultaneous Equation Analysis" (Journal of Transport Economics and Policy, Volume 36, Part 3, September 2002, pp. 469-490) (Attachment C). In that article Professor Cervero (Institute of Transportation Studies, Department of City and Regional Planning, University of California, Berkeley) and Professor Hansen (Institute of Transportation Studies, Department of Civil and Environmental Engineering, University of California, Berkeley) present simultaneous models predicting induced travel demand and induced road investment.

Based on a review of the literature, the accredited authors concluded that recent research is "broadly consistent with the assertions, made several decades ago, of two noted transport policy analysts, Anthony Downs and Wilfred Owen. Downs, argued that expanding congested freeways triggers a phenomenon he termed 'triple convergence' in which drivers shift their routes, times of travel, and modes in order to exploit the new capacity, thereby generating similar levels of congestion (at least during peak periods) as before. Downs' interpretation led Owen to conclude: 'Meeting the ever-growing needs for transport capacity has often proved to be a fruitless task, as the persistence in urban traffic jams attest.' In the United States, the contention that 'you can't build your way out of traffic congestion' has become the rallying cry of the Surface Transportation Policy Project (STPP). In a recent report based on 15 years of data across 70 US metropolitan areas, STPP concluded that regions that invested heavily in expanding road capacity fared no better in easing congestion than areas that did not" (p. 470).

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As defined therein, "'induced travel' reflect[s] all changes in trip-making that are unleashed by a road improvement: (1) newly generated trips (that is, latent demand); (2) longer journeys; (3) changes in modal splits; (4) route diversions; and (5) time-of-day shifts. 'Induced demand' is more restrictive, encompassing only the first three of these components, thereby representing only newly added VMT within a region" (p. 470). Based on their empirical findings, the authors found that modeling results were "consistent with theory and much of the empirical literature to date. Notably, a strong short-term travel induced demand effect was uncovered from the 22 years of county-level California data: from the elasticity estimate, every 10 per cent increase in lane-mile capacity was associated with a 5.9 per cent increase in VMT, controlling for other factors including the simultaneous influences of road supply and demand. However, the results also reveal a significant induced-investment effect, with lane-mile additions significantly explained by VMT: a 10 per cent increase in VMT was associated with a 3.3 per cent increase in lane-mile additions, all else being equal and simultaneous influences accounted for. Thus, 'induced demand' effects were found to be stronger than 'induced investment' effects, although not overwhelmingly so. Regarding the polarized debate that swirls around induced travel demand, as often is the case with ideological differences, there is some truth in both sides of the argument. That is, California experiences suggest that road investments induce travel demand and traffic growth induces road investments. The former dynamic appears to be stronger than the latter; however, both sets of relationships are statistically significant" (emphasis added) (pp 478-481).

In Environmental Council of Sacramento v. California Department of Transportation, Case No. 07CS00967 (July 15, 2008) (Attachment D), in a case involving highway improvements similar to those now being proposed, the court stated that "'[i]nduced demand is broader than a project's 'growth inducing impacts' in that a highway project's 'growth inducing impacts' may contribute to 'induced demand,' but 'induced demand' also may occur even if the project will not have an 'growth inducing impacts'" (Minute Order, p. 9). As noted in the court record "Will Kempton" (Caltrans Director) was expressly named in the suit (e.g., 'A peremptory of writ of mandate directed to Respondents California Department 12 of Transportation and Director Will Kempton shall issue under seal of this Court, ordering Respondents to do all of the following: (a) Within 30 days from service of this writ of mandate, Respondents shall vacate and set aside the June 21, 2007, certification of the Final Environmental Impact Report. . .(b) Respondents shall not reapprove the Project unless and until Respondents have certified an environmental impact report that complies with CEQA and the CEQA Guidelines, and otherwise complied with CEQA," emphasis added, p. 2). Since that same "Will Kempton" is now the OCTA's Chief Executive Officer, clearly the OCTA was intimately familiar with the case, the court's admonishment, and the requirements for a legally adequate CEQA document. Since the issues and defects raised in the above case are directly applicable to the proposed actions and its CEQA compliance obligations, each of the assertions and allegations raised by the Environmental Council of Sacramento, as presented therein, are incorporated herein by reference.

As specified in CEQ's "Memorandum to Heads of Agencies on the Application of the National Environmental Policy Act to Proposed Federal Actions in the United States with Transboundary Effects" (Council on Environmental Quality, Chair, July 1, 1997) (CEQ Memorandum): "Neither NEPA nor the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA define agencies' obligations to analyze effects of actions by administrative boundaries. Rather, the entire body of NEPA law directs federal agencies to analyze the effects of proposed actions to the extent they are reasonably foreseeable consequences of the proposed action, regardless of where those impacts might occur. Agencies must analyze indirect effects, which are caused by the action, are later in time or farther removed in distance,

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but are still reasonably foreseeable, including growth-inducing effects and related effects on the ecosystem, as well as cumulative effects" (pp. 3-4).

Despite the Department's claim that the proposed action will decrease congestion, there exists substantial evidence that the proposed improvements will actually increase the number of vehicles (as measured, indirectly, by increased total VMT), thus increasing congestion. As indicated in Tables 3.1.6-3 (I-405 Mainline Estimated Daily Vehicle Miles of Travel) and 3.2.6-4 (Vehicle Miles Traveled) in the DEIR/S, increased daily VMT attributable to each of the three build alternatives is presented in Table 6 (I-405 Mainline Estimated Daily Vehicle Miles of Travel). From this, it becomes evident that the proposed action does not get motorists out of their vehicles and onto public transportation. In fact, the proposed action would appears to have the oppose affect. Similarly, because each of the three build alternatives increase VMT over the No Build Alternative, the DEIR/S own evidence (e.g., total VMT is not the same under the No Build Alternative and the three build alternatives under both 2020 and 2040 conditions), as summarized in Table 7 (Induced Travel Demand in Increased Vehicle Miles Traveled), demonstrates that the proposed action both diverts traffic and induces travel demand (e.g., growth inducing).

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Table 6
I-405 Mainline Estimated Daily Vehicle Miles of Travel

Segment	2009	2020				2040			
		No Build	Alt 1	Alt 2	Alt 3	No Build	Alt 1	Alt 2	Alt 3
SR-73 to Brookhurst	1,053,000	1,142,000	1,225,000	1,283,000	1,314,000	1,204,000	1,341,000	1,437,000	1,492,000
Brookhurst to SR-22 East	1,796,000	1,928,000	2,089,000	2,167,000	2,195,000	2,013,000	2,244,000	2,405,000	2,460,000
SR-22 East to I-605	1,214,000	1,325,000	1,420,000	1,486,000	1,492,000	1,401,000	1,558,000	1,670,000	1,679,000
Total	4,063,000	4,396,000	4,714,000	4,936,000	5,001,000	4,618,000	5,143,000	5,512,000	5,631,000

Source: California Department of Transportation, Draft Environmental Impact Report/Environmental Impact Statement – San Diego Freeway Improvement Project, Orange and Los Angeles Counties, California, SCH #2009091001, Table 3.1.6-3 (I-405 Mainline Estimated Daily Vehicle Miles of Travel), p. 3.1.6-22)

Table 7
Induced Travel Demand in Increased Vehicle Miles Traveled

Total	4,063,000	4,396,000	4,714,000	4,936,000	5,001,000	4,618,000	5,143,000	5,512,000	5,631,000
Induced Demand			+318,000	+540,000	+605,000		+525,000	+894,000	+1,013,000

Source: California Department of Transportation, Draft Environmental Impact Report/Environmental Impact Statement – San Diego Freeway Improvement Project, Orange and Los Angeles Counties, California, SCH #2009091001, Table 3.1.6-3 (I-405 Mainline Estimated Daily Vehicle Miles of Travel), p. 3.1.6-22)

As indicated therein, when compared to the No Build Alternative, Alternative 1 will add 525,000 VMT, Alternative 2 will add 894,000 VMT, and Alternative 3 will add 1,013,000 VMT. As indicated in the PSR, with regards to automobile accidents and severity, the "average rate Statewide," as measured per million vehicle miles, is reported to be "0.006 fatal," "0.36 fatal plus injury," and "1.24 total" (Table 4, p. 17). Based on a projected daily increase of 1,013,000 vehicle miles, undisclosed is the projection that the three build alternatives will produce an estimated 2.2 annual fatalities, 140.6 annual fatalities plus injuries, and 458.8 annual accidents.

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Although representing a large projected increase in total vehicle miles traveled, the estimates appear unrealistically low in light of the USEPA's projection that between 2007 and 2030, VMT will increase by 45.6 percent within the Los Angeles-Riverside-Orange Metropolitan Statistical Area (MSA) (http://www.epa.gov/ttn/naaqs/ozone/areas/vmt/vmtcagf.htm). The reasons for any substantial deviation should be fully explained.

As indicated by the FHWA's "Multi-Pollutant Emissions Benefits of Transportation Strategies, Final Report" (November 14, 2006): "Transportation is a major source of air pollutant emissions. Nationally, on-road transportation sources are responsible for 27 percent of VOCs [volatile organic compounds] emissions, 35 percent of NOx [nitrogen oxides] emissions, and 55 percent of CO [carbon monoxide] emissions" (p. 1-1). The FHWA further noted:

> Strategies that reduce vehicle miles traveled (assuming no other effects) will reduce emissions of all pollutants. Each mile that a vehicle travels, it emits more pollution, so reducing vehicle travel mileage will reduce emissions of all seven gases [CO, particulate matter (PM_{10} and $PM_{2.5}$), NO_x, VOCs, sulfur oxides (SO_x), and ammonia (NH_3)] However, in conducting emissions analysis, it is important to examine not only the reduction in vehicle miles traveled (VMT), but also the reduction in the number of vehicle trips. During the first portion of a vehicle trip, when the vehicle engine starts cold, the vehicle emits some pollutants at a much higher rate than during the remainder of the trip, since emissions control technology does not operate as efficiently as when the vehicle is warm. Some strategies reduce VMT by shortening vehicle trip lengths but do not reduce the number of vehicle trips. For instance, development of a park-and-ride lot may reduce VMT by encouraging carpools, but the park-and-ride lot generally does not reduce vehicle cold starts, only running emissions, since individuals must drive to the lot in the morning. On the other hand, most bicycle/pedestrian projects reduce vehicle trips entirely, and will eliminate both cold start and running emissions. Consequently, VMT-reducing strategies may result in different percentage reductions in different pollutants, depending on whether or not vehicle trip cold starts are reduced (p. 2-1).

The proposed action produces the "double whammy" of both increasing VMT and, by promoting SOVs, increasing the number of total vehicle trips. In addition, the projected increase of VMT under each of the three build alternatives results in increased consumption of gasoline and other petroleum products. As reported in the USEPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2010" (April 15, 2012), the USEPA conclude: **78**

> The transportation end-use sector accounted for 1,772.5 Tg CO_2 Eq. [teragrams of CO_2 equivalent] in 2010, which represented 33 percent of CO_2 emissions, 23 percent of CH_4 emissions, and 48 percent of N_2O emissions from fossil fuel combustion, respectively. . .Among domestic transportation sources, light duty vehicles (including passenger cars and light-duty trucks) represented 61 percent of CO_2 emissions, medium-and heavy-duty trucks 22 percent, commercial aircraft 7 percent, and other sources 10 percent. Passenger car CO_2 emissions increased by 20 percent from 1990 to 2010, light-duty truck. . . From 1990 to 2010, transportation emissions rose by 19 percent due, in large part, to increased demand for travel and the stagnation of fuel efficiency across the U.S. vehicle fleet. The number of vehicle miles traveled by light-duty motor vehicles (passenger cars and light-duty trucks) increased 34 percent from 1990 to 2010, as a result of a confluence of factors including population growth, economic growth, urban sprawl, and low fuel prices over much of this period. . .

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> Almost all of the energy consumed for transportation was supplied by petroleum-based products, with more than half being related to gasoline consumption in automobiles and other highway vehicles. Other fuel uses, especially diesel fuel for freight trucks and jet fuel for aircraft, accounted for the remainder. The primary driver of transportation-related emissions was CO_2 from fossil fuel combustion, which increased by 20 percent from 1990 to 2010 (p. 3-13).

As indicated in the DEIR/S, "all three build alternatives would result in increased energy usage" (p. 3.2.8-9). Specifically: (1) "Alternative 1 would result in the annual consumption of approximately 167,069 barrels more crude oil than the No Build Alternative" (p. 3.2.8-5); (2) "Alternative 2 would result in the consumption of approximately 284,212 barrels more crude oil than the No Build Alternative" (p. 3.2.8-6); and (3) "Alternative 3 would result in the consumption of approximately 322,589 barrels more crude oil than the No Build Alternative" (p. 3.2.8-6).

The DEIR/S further states: (1) "The future amount of crude oil use associated with the construction and maintenance of Alternative 1 is estimated to be approximately 15.05 million barrels. Compared to the No Build Alternative, there would be no indirect energy savings. This demand would be partially offset by long-term per-vehicle energy savings in the corridor due to improved traffic flows under Alternative 1" (p. 3.2.8-8); (2) "The future crude oil consumption for Alternative 2 is estimated to be approximately 16.12 million barrels. Compared to the No Build Alternative, there would be no indirect energy savings. This demand would be partially offset by long-term per-vehicle energy savings in the corridor due to improved traffic flows under Alternative 2." (p. 3.2.8-8); and (3) "The future crude oil consumption for Alternative 3 is estimated to be approximately 16.45 million barrels. The overall energy consumption for Alternative 3 would be the highest of all three build alternatives. Compared to the No Build Alternative, there would be no indirect energy savings. This demand would be partially offset by long-term per-vehicle energy savings in the corridor due to improved traffic flows under Alternative 3" (p. 3.2.8-8).

By even inferring the unproven existence of "long-term per-vehicle energy savings," the Lead Agency seeks to skew the more salient point that, under all build alternatives, a substantial increase in "future crude oil consumption" will occur and, with it, a corresponding increase in GHG emissions. Similarly, with the exception of the limited increase in the total number of vehicles utilizing the HOV/HOT lanes, "improved traffic flow" is a myth. Under all scenarios and both pre-project and post-project conditions, LOS "F" conditions will remain in all GP lanes during peak-hour periods. **79**

4.0 I-405 IMPROVEMENT PROJECT

As indicated in Caltrans' RCR, "Interstate 405 (I-405) also known as the San Diego Freeway has 24.18 miles located in Orange County and 48.2 miles located in Los Angeles County" (RCR, Summary). In contrast, the DEIR/S states that "[t]he San Diego Freeway (I-405) is generally a north-south route with 24 miles in Orange County and 48 miles in Los Angeles County" (p. 2-1). As such, it is unclear as to the precise and level of accuracy with which the DEIR/S analyzes or describes the proposed action and its potential environmental effects.

As indicated in the NOI, "The proposed project covers approximately 14 miles" (p. 2). Similarly, the DEIR/S notes that the "entire" length of the "express lanes" is only 14 miles (e.g., "It is anticipated that toll amounts to use the entire 14 miles of the proposed I-405 Express Lanes from SR-73 to I-605 would be similar," p. 2-20). Also, the Traffic Study states that "[t]he

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proposed project covers a distance of approximately 14 miles along I-405 between SR-73 and I-605" (p. 1-3). In an apparent contradiction, the DEIR/S states that the project covers "approximately 16 miles" (pp. title page and 1-23). In further contradiction, the AQR described the project as either consisting of a "15-mile corridor length" (AQR, p. 51) or "cover[ing] a distance of approximately 14 miles" (AQR, PM Conformity HOT Spot Analysis, August 1, 2007, unpaginated). Although not a large distinction, these glaring difference regarding a fundamental aspect of the proposed action points to a lack of internal inconsistency with regards to the manner in which the project is described and suggests the existence of an inconsistency in which the project is analyzed.

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Of more significance, however, is the possible misrepresentation of the three build alternatives. For example, as indicated in correspondence from Will Kempton, OCTA's Chief Executive Officer to OCTA's Regional Planning and Highway Committee (Subject: Update on the Interstate 405 Improvement Project Alternatives, Business Models, and Delivery Option), dated April 16, 2012, the CEO noted that "Alternative 3 is approximately two miles longer than the other two alternatives" (p. 2). That difference is neither identified nor analyzed in the DEIR/S. From all these conflicting statements, it is not possible to accurately determine the length of any of the three build alternatives.

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In addition, internal inconsistencies have been identified throughout the DEIR/S. For example, the AQR states that "Alternative 1 is fully funded and is in the 2008 Regional Transportation Plan" (p. 73). Conversely, the DEIR/S notes that "[f]ull funding has not been identified for any of the proposed build alternatives and remains an unresolved issue" (emphasis added) (p. S-39).

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As stipulated under Section 15123(b) of the State CEQA Guidelines, EIRs must include "[a]reas of controversy known to the lead agency including issues raised by agencies and the public" and "[i]ssues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects." Since neither Caltrans nor the OCTA have presented a viable financing structure demonstrating the feasibility of any of the three build alternatives (thus allowing for public discussion and debate) and/or demonstrating the ability of either agency to effectuate any of the build alternatives or fund the "efforts" and/or "measures" identified therein, the Lead Agency has presented a legally inadequate CEQA analysis.

4.1 Orange County Transportation Authority Measure M/M2

As indicated in the DEIR/S: "A large portion of the funding for the proposed project is included in Orange County's Renewed Measure M transportation sales tax initiative (countywide half-cent sales tax) funding program. The Renewed Measure M (Measure M2) Program was authorized by Orange County voters in November 2006, and it began in 2011. The Measure M2 Program allocates sales tax revenues to specific Orange County, transportation improvement projects in three major areas – freeways, street, and roads, and transit. The Measure M2 Program, which is a 30-year $11.8 billion investment program designed to improve Orange County transportation, contains language that commits funding for improvements to the I-405 corridor and requires any arterial overcrossing replacements associated with widening I-405 to meet OCTA's "Master Plan of Arterial Highways" (MPAH) standards. Project K [San Diego Freeway (I-405) Improvements between the I-605 Freeway in Los Alamitos area and Costa Mesa Freeway (SR-55)] in Attachment A of the ordinance establishing the Measure M2 Program provides for improvements on I-405 that would 'add new lanes to the San Diego Freeway [I-405] between I-605 and SR-55, generally within the existing right-of-way. The project will make

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best use of available freeway property, update interchanges and widen all local overcrossings according to city and regional master plans" (p. 1-17 and 18).

4.1.1 Measure M

As indicated in the "Orange County Local Transportation Authority Ordinance No. 2" (Amended September 23, 1991, November 25, 1991, May 23, 1994, May 13, 1996, June 9, 1997, December 10, 2001, September 13, 2004), as signed on August 2, 1990: "The purpose of this measure is to improve the quality of life, relieve traffic congestion, and improve air quality in Orange County" (emphasis added) (p. 9). Absent from the DEIR/S is any indication that the "purpose" of the proposed action includes improving the "quality of life" and "air quality." Why was that stated purpose not explicitly included in the project description?

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As specified therein, the "Ordinance No. 2" stipulates that the OCTA shall accomplish that stated purpose by, among other things, "[e]xpanding the present Los Angeles to San Diego commuter rail service throughout Orange County," by "[i]ncreasing transit service and providing discount fares for senior citizens and the disabled," and by "[r]equiring that any proposed change in the amount of funds for rail transit, freeway, regional and local street improvement expenditures be brought back to the voters for their approval" (p. 10). How does imposing a toll on freeway use reduce transportation costs for senior citizens and the disabled? Based on that language, does the Lead Agency concede that any expenditure about the "$500 million dollars" specified therein requires voters' consent?

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Included in "Ordinance No. 2" was the "Orange County Division, League of California Cities Countywide Traffic Improvement and Growth Management Program: Countywide Growth Management Plan Component" (Revised June 15, 1989, Amended September 23, 1991, Amended May 23, 1994). As stipulated therein, "[t]he goals of the Traffic Improvement and Growth Management Program shall be to: [1] Outline each agency's plans and efforts to develop multi-jurisdictional traffic solutions through well-defined cooperative planning process; [2] Specify traffic level of service standards; [3] Promote alternative forms of transportation and overall system efficiency by maximizing use of the existing transportation network through Transportation Demand Management (TDM); [4] Provide funding for construction and maintenance of street, road and highway facilities; [5] Require a locally collected and administered traffic mitigation fee to guarantee that new development pays its fair share toward dealing with traffic generated by the new development; [6] Foster a better balance of jobs and housing and attempt to reduce the length of commuter trips through careful planning; [7] Provide that local jurisdictions, where applicable, establish performance standards for fire, police, library, flood control, and other infrastructure services based on local criteria; [8] Require the phasing of new development to insure that service level goals are achieved; [9] Envisions the creation of a deficient intersections program to promote funding matches between local fees and proceeds from the sales tax corrected deficiencies."

How does the Lead Agency's designation of the project "corridor" and failure to consider the adjoining segment of the I-405 Freeway in Los Angeles County fulfill the goal of promoting "multi-jurisdictional traffic solutions"? How does the DEIR/S failure to consider any performance-based alternatives allow specificity of 'traffic level of service standards"? How does the Lead Agency's rejection of the "TSM/TDM/Mass Transit Alternative' serve to "promote alternative forms of transportation"?

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With the exception of "Santa Ana Freeway Improvements for the San Diego Freeway (I-405) to the Los Angeles County Line," "San Diego Freeway (I-5) from the I-5/I-405 Confluence to San Clemente," and "I-4/I-405 Interchange," the proposed action does not appear to be a part of the "Orange County Freeway Project Descriptions" presented in Measure M. Excluding reference to any subsequent inclusion in Measure M2, where in Measure M is the "I-405 Improvement Project" identified and described? **86**

4.1.2 Measure M2

As indicated in the OCTA's "Renewed Measure M Transportation Investment Plan," accompanying OCTA's "Ordinance No. 3," as adopted on July 24, 2006: "The Ordinance is not intended to modify, repeal or alter the provisions of Ordinance No. 1, and shall not be read to supersede Ordinance No. 2. The provisions of the Ordinance shall apply solely to the transactions and use tax adopted herein" (p. 8). The following description of "Project K (San Diego Freeway [I-405] Improvements between the I-605 Freeway in Los Alamitos area and Costa Mesa Freeway [SR-55])" was provided therein:

> Add new lanes to the San Diego Freeway between I-605 and SR-55, generally within the existing right-of-way. The project will make best use of available freeway property, update interchanges and widen all local overcrossings according to city and regional plans. The improvements will be coordinated with other planned I-405 improvements in the I-405/SR-22/I-605 interchange area to the north and the I-405/SR-73 improvements to the south. The improvements shall adhere to recommendations of the Interstate 405 Major Investment Study (as adopted by the Orange County Transportation Authority Board on October 14, 2005) and will be developed in cooperation with local jurisdictions and affected communities. Today, I-405 carries about 430,000 vehicles daily. The volume is expected to increase by nearly 23 percent, bringing it up to 528,000 vehicles daily by 2030. The project will increase freeway capacity and reduce congestion. Near-term regional plans also include the improvements to the I-405/SR-73 interchange as well as a new carpool interchange at Bear Street using federal and state funds. The estimated cost for these improvements to the I-405 is $500.0 million (emphasis added) (p. 13).
>
> Freeway Projects will be built largely within existing rights of way using the latest highway design and safety requirements. However, to the greatest extent possible within available budget, Freeway Projects shall be implemented using Context Sensitive Design, as described in the nationally recognized Federal Highway Administration (FHWA) Principles of Context Sensitive Design. Freeway projects will also be planned, designed and constructed with consideration for their aesthetic, historic and environmental impacts on nearby properties and communities using such elements as parkway style designs, locally native landscaping, sound reduction and aesthetic treatments that complement the surroundings. . .At least five percent (5%) of the Net Revenues allocated for Freeway Projects shall fund Programmatic Mitigation for Freeway Projects (emphasis added) (p. 4-5).

Ordinance 3 further noted that "Freeway Projects will be planned, designed and constructed using a flexible community-responsive and collaborative approach to balance aesthetics, historic and environmental values with transportation safety, mobility, maintenance and performance goals" (p. B-5). Absent from the DEIR/S are any statements of OCTA's adherence to the recommendations of the "Interstate 405 Major Investment Study," evidence of receptivity

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to Seal Beach's expressed concerns, or funding commitments to environmental mitigation within the City. Although "Alternative 4 is a lower-cost option to provide localized improvements within the I-405 corridor that could be fully funded and implemented with available revenue from Orange County's Renewed Measure M transportation sales tax initiative" (p. 2-28), absent from the DEIR/S is the analysis of any alternative designed "within [the] available budget."

What is "Context Specific Design" and how would the principles exposed therein relate to the planned relocation of the existing soundwalls along Almond Avenue? What is mean by "designed and constructed with consideration for their aesthetic, historic and environmental impacts on nearby properties and communities" in the proposed relocation of the existing soundwalls along Almond Avenue? How does the Lead Agency's self-imposed "independent utility and logical termini," excluding consideration of those freeway segments located to the north and south of the proposed action, conform to the mandate that "improvements will be coordinated with other planned I-405 improvements in the I-405/SR-22/I-605 interchange area to the north and the I-405/SR-73 improvements to the south"? **87**

Measure R was approved by Los Angeles County voters in November 2008 and increased sales taxes in Los Angeles County by one-half cent for 30 years in order to fund transportation projects and improvements. The ballot measure created the "Traffic Relief and Rail Expansion Ordinance" (effective January 2, 2009) (http://www.metro.net/measurer/images/ordinance.pdf) which included an expenditure plan, defined specific projects for funding, established a timeframe for the availability of funds, and expected level of funding.

Absent from the DEIR/S is any reference to or discussion of the Gateway Cities Council of Governments' "I-605 Congestion 'Hot Spots' Feasibility Analysis," as funded under Los Angeles County Measure R. That study is analyzing congestion improvement alternatives for various "hot spots" along the I-605, SR-91, I-405 and I-105 Freeways in Los Angeles County, as well as the surrounding arterial street network and includes improvements to freeway-to-freeway interchanges, additional freeway GP lanes, and arterial street improvements. How is the Lead Agency's failure to even identify the existence of that study and that ordinance consistent with Measure M2's requirement that freeway improvements be coordinated? **88**

To the extent that Caltrans and/or the OCTA assert that the project is publicly mandated (as a result of the passage of Measures M/M2), then, at a minimum, the Lead Agency must: (1) define the project's P&N and objectives as the fulfillment of that mandate; (2) include "Project K" as one of the alternatives examined in detail in the DEIR/S; and (3) identify "Project K" as the "preferred" alternative. The fact that none of those actions in fact occurred negates any assertion of alleged connectivity between the proposed action and the voters' directive. By defining the proposed action's P&N and objective as something other than the voters' directive and by subsequently eliminating "Project K" (i.e., Alternative 4) because it "would not meet the project purpose and was eliminated from further consideration" (p. 2-4) appear to suggest that a State bureaucracy believes that it is not bound by the majority of the will of the County's voters. **89**

Numerous City's residents have stated that the introduction of HOT lanes along the I-405 Freeway is inconsistent with the provisions of Measures M/M2. While Ordinance Nos. 2 and 3 include extensive references to "freeways," there is not a single reference to "toll" roads, to "HOT lanes," or to "express lanes." The City has reviewed those ordinances and concurs that no such references exist therein. Is the Lead Agency asserting that "HOT lanes" and/or "express lanes" are either explicitly or implicitly authorized thereunder and that Measures M/M2 funds can be used for the development of any form of pay-for-use roadway system? **90**

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4.2 Department-Specified Purpose and Need

Although purportedly the basis for the initiation of improvements to the I-405 Freeway, absent from the Lead Agency's declared P&N is any reference to Measures M/M2.

As indicated in FHWA's "NEPA and Transportation Decisionmaking – The Importance of Purpose and Need in Environmental Documents" (September 18, 1990): "The purpose and need section is in many ways the most important chapter of an environmental impact statement (EIS). It establishes why the agency is proposing to spend large amounts of taxpayers' money while at the same time causing significant environmental impacts. A clear, well-justified purpose and need section explains to the public and decision makers that the expenditure of funds is necessary and worthwhile and that the priority the project is being given relative to other needed highway projects is warranted. In addition, although significant environmental impacts are expected to be caused by the project, the purpose and need section should justify why impacts are acceptable based on the project's importance. As importantly, the project purpose and need drives the process for alternatives consideration, in-depth analysis, and ultimate selection. The Council on Environmental Quality (CEQ) regulations require that the EIS address the 'no-action' alternative and 'rigorously explore and objectively evaluate all reasonable alternatives'" (emphasis added).

On May 12, 2003, the CEQ issued a guidance letter to The Honorable Norman Y. Mineta, Secretary of the Department of Transportation concerning the role that the P&N plays in the context of compliance with CEQ's regulations under NEPA. As indicated therein: "The requirement for a discussion of 'purpose and need' in an environmental impact statement under the CEQ regulations is to 'briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action' (40 C.F.R. §1502.13). This discussion is important for general context and understanding as well as to provide the framework in which 'reasonable alternatives' to the proposed action will be identified. The lead agency - the federal agency proposing to take an action - has the authority for and responsibility to define the 'purpose and need' for purposes of NEPA analysis. This is consistent with the lead agency's responsibilities throughout the NEPA process for the 'scope, objectivity, and content of the entire statement or of any other responsibility' under NEPA" (p. 1).

With regards to CEQA, a project description shall include a "statement of objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR. . .The statement of objectives should include the underlying purpose of the project" (14 CCR 15124[b]).

Section 6002 of SAFETEA-LU established an "environmental review process" that is required to be followed for all environmental impact statements prepared for highway or transit projects that require approval of the USDOT. The FHWA's and the FTA's SAFETEA-LU Guidance contains detailed guidance regarding implementation of Section 6002. As defined therein, the term "transportation project" means any highway project, any public transportation capital project, and any multi-modal project that requires an approval from FHWA or FTA. As indicated in the DEIR/S: "Authority to operate a toll facility on the Interstate Highway System would be required from FHWA" (p. 1-19). In addition, as specified under Section 6002(f) therein, "[t]he statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include - (A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan; (B) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or tribal plans;

GL14 Continued

and (C) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies."

As indicated in the NOI, "Caltrans, as the delegated National Environmental Policy Act (NEPA) agency, in cooperation with the Orange County Transportation Authority (OCTA), will prepare an environmental impact statement (EIS) on a proposal for a highway improvement project in Orange County, California" (p. 2) and "[t]he purpose of the project, as currently defined, is to increase capacity, improve traffic and interchange operations, and enhance safety on 1-405 between SR-73 and I-605" (pp. 2-3). As indicated in the NOP, Caltrans "will act as the lead agency and will prepare an environmental impact report [EIR] for the project" and "Caltrans, in cooperation with the OCTA, proposes to increase capacity, improve traffic and interchange operations, and enhance safety by widening the segment of the I-405 from SR-73 to I-605" (p. 1). The "Public Scoping Notice" states that "Caltrans is the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) Lead Agency and the OCTA is the Funding Agency and a Responsible Agency under CEQA" (p. 1).

From those notices, it would appear that the purpose of the project is consistently defined and that the resulting DEIR/S would consistently replicate that purpose. However, as indicated in the DEIR/S, the Department subsequently states that "[t]he project purpose is a set of objectives the project is intended to meet. The project need is the range of transportation deficiencies that the project was initiated to address. The purpose of the proposed action is to: [1] Reduce congestion; [2] Enhance operations; [3] Increase mobility, improve trip reliability, maximize throughput, and optimize operations; and [4] Minimize environmental impacts and right-of-way acquisition. In furtherance of the project's purpose, the following objective is then established by the Lead Agency: "To be consistent with regional plans and find a cost-effective early project solution for delivery" (p. S-1). Absent from the DEIR/S' list of project purposes and objectives is any reference to "increase capacity, improve traffic and interchange operations, and enhance safety." For some inexplicable reason, the purpose and objectives of the proposed action, as described in the Department's scoping documents, are substantially different from the purpose and objectives of the proposed action described in the DEIR/S (indicating a lack of continuity and consistency between the NOP/NOI and DEIR/S).

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The P&N statement presented in the DEIR/S neither identifies the need for a specific funding source nor limited the range of design and development alternatives that could be formulated by the Department in response thereto (e.g., cost and other financial considerations are not included in the P&N). Similarly, absent from the P&N is any reference to Measure M/M2 and/or the representations that were make to the County's voters at the time of there passage.

As indicated in the Lead Agency's technical studies, the proposed action's purpose and objectives further differ from those presented in either the NOP/NOI and DEIR/S. For example, a similar but not totally consistent purpose statement is present in the "Traffic Study – San Diego Freeway (I-405) Improvement Project SR-73 to I-605, Orange and Los Angeles Counties" (Caltrans, May 2011). As stated therein, "[t]he purpose of the project is to add capacity and reduce congestion on the general purpose and High Occupancy Vehicle (HOV) lanes along the entire I-405 corridor from SR-73 to I-605; enhance interchange operations; increase mobility, improve trip reliability, maximize throughput, and optimize operations; and enhance safety, all while minimizing right-of-way (ROW) acquisition and ensuring the financial viability of proposed improvements" (emphasis added) (p. 1-1).

GL14 Continued

In contrast, the CIA states that "[t]he purpose of the proposed action is to: [1] Add capacity and reduce congestion on the General Purpose (GP) and High Occupancy Vehicle (HOV) lanes along the entire I-405 corridor from SR-73 to I-605; [2] Enhance interchange operations; [3] Increase mobility, improve trip reliability, maximize throughput, and optimize operations; [4] Implement strategies that ensure the earliest project delivery; and [5] Enhance safety" (p. S-1). Also, "[t]he following objectives have been established to successfully complete the project while minimizing environmental impacts: [1] Minimize ROW acquisition; [2] Ensure financial viability; [3] Meet, at a minimum, the commitments of Orange County's Renewed Measure M transportation sales tax initiative to add capacity to the I-405 within the project area; [4] Maintain or improve future traffic performance within the corridor; and [5] Improve the corridor so as to ensure the facility is maintained as an effective link in the National Strategic Highway Network" (p. S-1 and 2).

As presented in the DEIR/S, a similar set of "purposes" and "objectives" is presented in the NSR (p. 2) and a similar "purpose" statement is presented in the "Initial Site Assessment – San Diego Freeway (I-405) Improvement Project SR-73 to I-605, Orange and Los Angeles Counties" (Caltrans, March 2011) (ISA) (p. 8).

As illustrated in Table 8 (Lack of Consistencies in the Proposed Action's Stated Purpose and Objectives), ignoring the additional substantial differences presented in the "Interstate 405 Major Investment Study, Final Report" (OCTA, February 2006) (MIS) and in the "Project Study Report/Project Development Support" (Caltrans/OCTA, July 2008) (PSR/PDS), the NOI/NOP, DEIR/S, and accompanying technical studies are inconsistent with regards to the stated "purpose" and "objectives" of the proposed action. As a result, since there exists no single set of objectives that the project seeks to accomplish, under CEQA, it is not possible to formulate a "range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project" (14 CCR 15126.6[a]). Instead, although entirely within the Lead Agency's control, what is presented is a "moving target" which is provided without explanation why the project's stated "purpose" and "objectives" remain constantly in flux. Presented below is a summary of the constantly changing P&N and objectives of the proposed action. **93**

In addition, absent from the project's stated purposes and objective is any reference to "safety"; however, the DEIR/S subsequently states that "the proposed project is a transportation project within an urbanized transportation corridor designed to enhance public safety and relieve congestion" (pp. 4-4, 4-5, 4-10). As such, the DEIR/S is not even internally consistent as to what the proposed project seeks to achieve.

Assuming that "goals" and "objectives" are synonymous for the purpose of environmental compliance, in comparison, the "goals" formulated for the West County Connector (WCC), as presented in the WCC FEIR/S included: "[1] Improve mobility and reduce congestion in the SR-22/WOCC study area; [2] Maximize cost-effectiveness of the SR-22/WOCC improvements; [3] Minimize adverse and maximize beneficial environmental impacts to SR-22/WOCC communities; [4] Minimize negative and maximize positive economic impacts to SR-22/WOCC communities" (p. v). The substantive deviation among the two adjoining and interconnected projects is never explained.

GL14 Continued

Table 8
Lack of Consistencies in the Proposed Action's Stated Purpose and Objectives

	NOI/NOP	DEIR/S	Technical Studies[1]
Purpose	Increase capacity Improve traffic and interchange operations Enhance safety on I-405 between SR-73 and I-605	Reduce congestion Enhance operations Increase mobility, improve trip reliability, maximize throughput, and optimize operations Minimize environmental impacts and right-of-way acquisition	Add capacity and reduce congestion on the General Purpose and High Occupancy Vehicle lanes along the entire I-405 corridor from SR-73 to I-605 Enhance interchange operations Increase mobility, improve trip reliability, maximize throughput, and optimize operations Implement strategies that ensure the earliest project delivery Enhance safety
Objectives	None stated	To be consistent with regional plans and find a cost-effective early project solution for delivery	Minimize ROW acquisition Ensure financial viability Meet, at a minimum, the commitments of Orange County's Renewed Measure M transportation sales tax initiative to add capacity to the I-405 within the project area Maintain or improve future traffic performance within the corridor Improve the corridor so as to ensure the facility is maintained as an effective link in the National Strategic Highway Network

Footnotes:
1. California Department of Transportation and Parsons, Visual Impact Assessment – San Diego Freeway (I-405) Improvement Project SR-73 to I-605, Orange and Los Angeles Counties, May 2011, p. 3.

Source: City of Seal Beach

In defining meaning, the court (California Oak Foundation v. Regents of the University of California [2010]) stated that "[t]he primary goal in interpreting any statute is to 'determine the Legislature's intent so as to effectuate the law's purpose' [Citation] To this end, we 'give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose, i.e., the object to be achieved and the evil to be prevented by the legislation' [Citation]. If the statutory language is clear, we follow its plain meaning so long as an absurd or unintended consequence does not result [Citation]" (emphasis added). A plain reading of the Lead Agency's objective indicates that the "objective to be achieved" is consistency with regional plans and that the "evils to be prevented" are cost inefficiencies and delayed implementation.

If so defined, by failing to present a factual analysis of the proposed action's consistency with regional plans (e.g., Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy, April 4, 2012), the Lead Agency has not provided its decision makers and other stakeholders with sufficient information to demonstrate compliance. By pursuing an implementation plan far in excess of available funding (e.g., "[f]ull funding has not been identified for any of the proposed build alternatives and remains an unresolved issue," p. S-39) rather than focusing on improvements that could be built for the currently available funding (e.g., "Alternative 4 proposed to provide localized improvements within the I-405 corridor that could be fully funded and implemented with available revenue from Orange County's Renewed Measure M transportation sales tax initiative," pp. 2-3 and 4), the Lead Agency has pursued a path that prevents attainment of its own self-described objective (i.e., "early project solution for delivery).

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It is noted that "Alternative 4," as referenced above, is not the same project as "MIS Alternative 4" identified in the MIS [405 Major Investment Study, Final Report] and purportedly carried forward by the Lead Agency as "Alternative 1" in the DEIR/S (e.g., "Only one build alternative, Alternative 1, which was MIS Alternative 4, has been retained as a viable alternative and is fully evaluated in this document," p. 2-3).

Because the Lead Agency concludes that new "Alternative 4 would neither provide additional capacity along the entire corridor nor enhance interchange operations," it would thus "not meet the project purpose and was eliminated from further consideration in this Draft EIR/EIS" (p. 2-4). Since it is the single objective of the proposed action "[t]o be consistent with regional plans and find a cost-effective early solution for delivery" (p. S-1), it is evident that the proposed actions and stated objective are misaligned and that the environmental analysis has been artificially manipulated toward another predetermined outcome.

Alternatively, since "consistency" (or conformity) with regional plans constitutes a pre-existing obligation for the commitment of Federal funds (e.g., 40 C.F.R. 93.104[d], 40 C.F.R. 93.109), to paraphrase the DEIR/S, the Lead Agency's sole objective is to "pursue the implementation of the proposed action or pursue the implementation of the proposed action faster."

Referencing SCAG's 2012 RTP/SCS: "A successful RTP creates opportunities for business, investment, and employment in Southern California. This plan does so by proposing over $500 billion of investment in the next 25 years" (p. 12).

Recognizing that these are austere economic times, it must be realistically assumed that the identified level of investment is unattainable. In order to assist in prioritization, the 2012 RTP/SCS contain key "guiding policies," including: (1) "Policy 1: Transportation investments shall be based on SCAG's adopted regional performance indicators"; (2) "Policy 4: Transportation demand management (TDM) and non-motorized transportation will be focus areas, subject to Policy 1"; and (3) "Policy 5: HOV gap closures that significantly increase transit and rideshare usage will be supported and encouraged, subject to Policy 1" (p. 15). Identified performance outcomes include: (1) "Maximize mobility and accessibility for all people and goods in the region"; (2) "Preserve and ensure a sustainable regional transportation system"; (3) "Actively encourage and create incentives for energy efficiency, where possible"; and (4) "Encourage land use and growth patterns that facilitate transit and non-motorized transportation" (emphasis added) (p. 15). The proposed action fulfills none of these guiding policies and does not promote the achievement of any of those performance outcomes. As such, in the larger policy framework, the proposed action cannot be found consistent with the 2012 RTP/SCS.

As indicated in the California Transportation Commission's (CTC) "Statewide Transportation Needs Assessment, Final Report" (November 2011) (CTC Needs Assessment), Statewide, "[t]he total estimated revenue from all sources during the ten-year study period is $242.4 billion. This represents about 45 percent of the overall estimated costs of projects and programs that were identified in the needs analysis, and leads to a shortfall of about $295.7 billion over the ten-year period. If it is assumed that revenues for preservation (rehabilitation and maintenance) are provided at historical levels (43.4%), then the amount of revenue available for system expansion and system management projects during this period is $94.7 billion, or only about 48 percent of the estimated costs of needed projects" (p. 1-2). As evidence by those figures, the State is in desperate need for supplemental transportation funds and/or belt tightening.

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The OCTA has already tipped its hand with regards to its predetermination of the CEQA and NEPA processes ultimate outcome. As indicated in correspondence from Arthur T. Leahy, OCTA's CEO to OCTA's Highway Committee (Subject: Consideration of the San Diego Freeway Improvement Project for Future High-Occupancy Toll Land and Design-Build Authority), dated January 19, 2009, the CEO stated: (1) "The current estimated cost from the project study report to add one or two general purpose lanes ranges from $1.1 billion to $1.85 billion, but only $500 million is available in Renewed Measure M for this project. Implementing a HOT lane system on Interstate 405 would generate additional revenues to help fund these improvements and facilitate an early implementation of a more comprehensive traffic congestion relief project in the corridor" (emphasis added) (p. 3); and (2) "OCTA is ready to compete with other counties to implement HOT lanes as a public-private partnership project using design-build and to compete for anticipated federal economic stimulus funding" (p. 4). As such, based on the disparity between projected costs and available funding, only a revenue-generating alternative will be deemed feasible.

In addition, the "Draft Transportation Management Plan" (Caltrans/OCTA, August 2011) (Draft TDM), as included in Appendix D of the CIA, states that "[t]he construction of this project is expected to take approximately 54 months" (Draft TDM, p. 8) or five years (e.g., "The five-year construction period would begin in 2015," AQR, p. 1). Only Alternative 3 is expected to require 54 months (DEIR/S, Table S-1, p. S-19) to complete. As such, the CIA (and by extent the DEIR/S in its entirely) focuses primarily on the implementation of Alternative 3.

The DEIR/S indicates that Alternative 3 "was included in the project development process because it has revenue-generating potential and because it provides a congestion management element not present in the other build alternatives" (p. S-39). In addition, "[b]ecause of the tolling component of Alternative 3, there are additional options available to address the shortfall of Alternative 3 (e.g., a public private partnership and a TIFIA loan) that would not be available for Alternatives 1 and 2" (p. 1-18) and "[i]t is anticipated that construction of the tolled and GP lanes in each direction could be partially funded by the toll revenue anticipation bonds" (p. 2-3). As such, although no definitions are provided, it appears that the Lead Agency has artificially structured its sole objective to promote the subsequent selection of Alternative 3 in that the Lead Agency it will seek to argue that a toll-generating facility will best support a "cost-effective early project solution for delivery" (p. S-1). **94**

In suggesting that no preferential project has yet to be identified, it is disingenuous for the DEIR/S to state that "[a]fter the public circulation period for the Draft EIR/EIS, all comments will be considered, and the Project Development Team (PDT) will select a preferred alternative" (p. 2-27). Evidence of predetermination can be found in OCTA's 2010 LRTP. Presented therein is a "list of freeway projects included in the Year 2035 Preferred Plan" (p. 74). The following project is included on that list: "Interstate 405: From the SR-73 to the San Gabriel River Freeway (I-605), provide two High Occupancy Toll (HOT) lanes in each direction, converting existing HOV lanes, and adding one new HOT lane in each direction" and "[f]rom SR-73 to the San Gabriel River Freeway (I-605), add one mixed-flow lane in each direction" (emphasis added) (p. 74). Even though the CEQA/NEPA process has yet to be completed, the proposed action (i.e., see 2010 LRTP, p. B3) has already been included in the OCTA's "detailed Year 2035 Preferred Plan Project List" with a $2.2 billion budget and a Year 2022 completion date (emphasis added) (p. B3). **95**

As described in the DEIR/S, Alternative 3 includes "one GP lane between Euclid Street and I-605 and one tolled Express Lane in each direction between State Route 73 (SR-73) and State

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Route 22 (SR-22) each of I-405 to be managed jointly as a tolled Express Facility with two lanes in each direction between SR-73 and I-605" (Abstract). Since the objective of the proposed action is be "consistent with regional plans" (p. S-1), it is now overly convenient to merely look to OCTA's recently adopted long-range plan to demonstrate consistency.

Based on that declared purpose and objective, with regards to both describing the proposed action and limiting the range of alternatives under consideration, the DEIR/S states that "[t]he project proposes to improve the mainline freeway and interchanges on I-405 in Orange and Los Angeles counties" (emphasis added) (p. S-2). The Department states that the project "proposes" certain actions not that the project's "purpose" is specific actions. Neither the stated "purpose" nor singular "objective" specify or limit the range of solutions to mainline freeway improvements, specify an increase in lane-miles, or place revenue generation above mobility and throughput. The Lead Agency nonetheless elects to limit the environmental analysis to the following "three build alternatives": "Alternative 1 – Add One GP Lane in Each Direction; Alternative 2 – Add Two GP Lanes in Each Direction; and Alternative 3 – Express Lanes (Tolled) and Add One GP Lane in Each Direction" (p. S-3). Each of those alternatives examine only mainline freeway improvements and increased lane-miles.

As previously indicated, the project's declared purpose and objective is moving target, such that at each step in the process a new set of rationale is formulated in order to artificially narrow the range of alternatives without any attempt to reflect back in time to see: (1) what criteria had been previously applied and how new alternatives might promote the attainment of those foundational objectives; or (2) how previously discounted options might fair when examined from an evolving purpose statement. For example, as indicated, in part, in the MIS: "The need for improvements in the I-405 corridor stems from the mobility problems found in the corridor. The purpose of improvements is to address those problems. Four key points were identified that represent the most significant mobility problems within the study area: (1) Demand already exceeds current capacity, resulting in significant travel delays during peak and some off-peak periods. . .(2) Diversion of traffic is taking place onto arterials because the freeway is too congested during peak periods. . .(3) Operational problems occur on the freeway, primarily because of physical bottlenecks. . .(4) The corridor has a lack of public transportation options (pp. 11-13). Thirteen conceptual alternatives were identified in the MIS and subjected to a screening process in order to identify those alternatives most responsive to those identified mobility problems and transportation needs. With regards to each of those key issues, specific evaluation measures were identified. As indicated in Table 9 (Major Investment Study - Initial Screening Evaluation Measures) and Table 10 (Major Investment Study - Measures Used to Evaluate the Final Alternatives) terms like "mobility" were defined in a manner which allowed for objective (quantitative or qualitative) evaluation and comparative analysis.

As noted, bottlenecks (number of breaks in lane continuity), lane drops (completeness of auxiliary lanes), arterial VMT, trips diverted to transit, and environmental justice impacts were all factors that were used to identify and evaluate possible project alternatives in the MIS. As noted therein, the "TSM Alternative" resulted in a reduction of VMT (MIS, Table 4-5, pp. 45-46). In contrast, none of those criteria have been retained or considered in the DEIR/S. From that, it can be concluded that the purpose and objective of the project examined in the MIS is different from the purpose and objective of the project addressed in the DEIR/S. As a result of that change, contrary to what is inferred by the Lead Agency, there is no clear or direct continuity between the MIS and DEIR/S (e.g., the OCTA cannot throw out its old planning criteria and apply new criteria and then assert that the two are the same). **96**

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Table 9
Major Investment Study - Initial Screening Evaluation Measures

Issue	Measure
Freeway mobility	Person (in vehicle) hours of delay in study area Percent change in peak period travel times on I-405 Volume-to-capacity ratios on I-405
Arterial mobility	Reduction in arterial VMT
Travel choices	Daily transit trips Daily HOV trips
Land use/Economic development	Value of time saved by commercial vehicles
Implementation	Total capital cost (of project) Cost effectiveness (cost per person hour of travel saved) Right-of-way impacted Visual impacts (from elevation)

Source: Orange County Transportation Authority, Interstate 405 Major Investment Study, Final Report, February 2008, Table 2-2 (Initial Screening Evaluation Measures), p. 17.

Table 10
Major Investment Study - Measures Used to Evaluate the Final Alternatives

Issue	Measure
Freeway mobility	Person (in vehicle) hours of delay in study area Percent change in peak period travel times on I-405 Volume-to-capacity ratios on I-405 Flexibility to increase capacity and manage demand Number of breaks in lane continuity (bottlenecks) Completeness of auxiliary lanes
Arterial mobility	Reduction in arterial vehicle miles (VMT) and hours (VHT) of travel Number of signalized intersections operating at LOS E or F Total delay at signalized arterial/freeway-ramp intersections Volume-to-capacity ratios of arterial mid-block intersections Volume-to-capacity ratios of freeway crossings not at interchanges
Operations	Number of freeway entrances and exits ramps requiring more than one lane
Travel choices	Daily transit trips HOV lane travel time improvements Transit service to transit-dependent areas
Land use/Economic development	Peak period travel times to major activity centers Value of time saved by commercial vehicles
Implementation	Total capital cost (of project) Cost effectiveness Right-of-way acquisition impacts to residential and commercial buildings and property Environmental justice impacts Archaeological sites impacted Public facilities impacted Parks and recreation impacts Acquisition of sites with hazardous materials

Source: Orange County Transportation Authority, Interstate 405 Major Investment Study, Final Report, February 2008, Table 4-1 (Measures Used to Evaluate the Final Alternatives), p. 41.

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As indicated in the DEIR/S: "Project studies for the I-405 Improvement Project were initiated in 2003 under an MIS process to develop viable alternatives for the I-405 corridor from SR-73 to I-605 (proposed project). Under the MIS process, 13 conceptual project alternatives were originally developed in consultation with the Department and OCTA and are documented in a Conceptual Alternatives Report (dated May 2004). The 13 conceptual alternatives were subjected to an initial screening process to identify the alternatives most responsive to the mobility problems and transportation needs of the I-405 corridor. The 13 conceptual alternatives included 4 alternatives that added travel lanes, as well as 4 alternatives that included fixed guideway transit in the median of the freeway and 2 that included bus-rapid-transit (BRT) operating on proposed dual HOV lanes along the freeway in each direction with median station stops similar to those currently in use on Interstate 110 (I-110) in Los Angeles. All of the alternatives included park-and-ride facilities, as well as either enhanced local bus service, express bus service, or both. Freeway and arterial mobility, travel choices, land use, economic development, and implementation measures were taken into consideration in the initial screening analysis" (p. 2-2).

With the possible single exception of "mobility" (a turn which should be considered distinct from "accessibility") none of the screening criteria against which those "13 conceptual alternatives" were evaluated (i.e., mobility, travel choices, land use, economic development, and implementation measures) relate to the stated purpose of the proposed action (i.e., reduce congestion, enhance operations, mobility, improve trip reliability, maximize throughput, and optimize operations, and minimize environmental impacts and right-of-way acquisition) and its singular objective (i.e., consistency with regional plans and cost-effective early project solution for delivery) or the criteria upon which the project's current list of alternatives have been based.

As subsequently indicated in the "Project Study Report/Project Development Support" (Caltrans/OCTA, July 2008) (PSR/PDS), the Department states that "[t]he purpose of the proposed project is to meet four primary objectives and one secondary objective. The four primary objectives are to: (1) increase the capacity of the freeway to meet more of the existing and forecasted demand, increase peak period corridor speeds, and reduce peak period corridor travel times; (2) improve traffic operations on the freeway mainline; (3) enhance interchange operations; and (4) enhance safety" (p. 7).

The project's current objective does not appear to comply with the requirements of Section 6002(f) of SAFETEA-LU. As specified therein: "Purpose and Need - (1) Participation - As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project. (2) Definition - Following participation under paragraph (1), the lead agency shall define the project's purpose and need for purposes of any document which the lead agency is responsible for preparing for the project. (3) Objective - The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include - (A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan; (B) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or tribal plans; and (C) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies" (emphasis added). 97

In addition, no definition of either "cost-effective" or "early" is presented and no parameters are provided against which those terms can be evaluated. Similarly, absent from the Lead Agency's stated objective is any reference to the I-605 Freeway or to any specific freeway improvements

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(e.g., add new GP, HOV, or HOT lanes). Additionally, the project's P&N neither includes any reference to tolling nor to the generation of additional funding (e.g., "It is anticipated that construction of the tolled and GP lanes in each direction could be partially funded by the toll revenue anticipation bonds," p. 2-3). As such, although the construction of new GP, HOV, and/or HOT lanes may constitute a possible course of action, those improvements clearly do not constitute the only manner in which the stated objective could be obtained. 98

The Lead Agency states that "[n]one of the conceptual alternatives including fixed guideway or BRT in the median of the freeway were included in the final evaluation due to their high costs and/or their ROW impacts" (emphasis added) (p. 2-3). As indicated in Section 15126.6(b) of the State CEQA Guidelines, "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effect of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." As such, cost considerations do not constitute a basis for rejection of project alternatives. In Citizens of Goleta Valley v. Board of Supervisors, the Appellate Court noted that "[t]he fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project" (emphasis added). No such evidence has been presented by the Department.

Similarly, although the Lead Agency seeks to link the proposed action by referencing the alternatives analyses presented in both the MIS and PSR/PDS, the previous focus on "public transportation" (e.g., changes in local bus headways, fixed guideway and BRT services, and park-and-ride facilities) has inexplicably disappeared. 99

As noted in the DEIR/S: "A stand-alone TSM/TDM Alternative was identified for the corridor. It does not meet the project purpose and is described in Section 2.2.7, Alternatives Considered but Eliminated from Further Discussion. The TSM/TDM Alternative consists primarily of operational investments, policies, and actions aimed at improving traffic flow, promoting travel safety, and increasing transit usage and rideshare participation. . .TSM consists of strategies to maximize efficiency of the existing facility. . .TDM focuses on regional strategies for reducing the number of vehicle trips and vehicle miles traveled, as well as increasing vehicle occupancy" and "'[p]romoting mass transit and facilitating nonmotorized alternatives" (pp. 2-22 and 23). As further evidence of the lack of objectivity, based on the Lead Agency's own declaration: (1) "improving traffic flow, promoting travel safety, and increasing transit usage and rideshare participation" are not, either in whole or in part, apparently a part of the P&N for the proposed action; and (2) those actions would not, either direct or indirect, serve to reduce congestion, enhance operations; increase mobility, improve trip reliability, maximize throughput, optimize operations, and/or promote attainment of regional plans (p. S-1). 100

Because TSM/TDM activities are intended to increase "transit usage and rideshare participation" (p. 2-22) and "reduce the amount of single-occupancy vehicle trips" (p. 2-23), since it is the Lead Agency's desire to generate revenues by promoting express lane usage by "single-occupant vehicles" (p. 2-11), TSM/TDM strategies would appear to be the antithesis of the goals of the proposed action. Alternatives 1, 2, or 3 have not been formulated to reduce the number of vehicles on public roadways (e.g., "20 percent to 40 percent increase in GP lane capacity of the proposed alternatives," p. 1-22) or to reduce the number of VMT (e.g., "In 2040, daily VMT under Alternative 3 is anticipated to be greater than under the no-build condition by 1,013,000, compared to the existing condition daily VMT of approximately 4 million," p. 4-44);

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rather the proposed action seeks to perpetuate the myth that spending "$1.7 billion" (p. 2-10) or more to add more lane-miles is the only means available to effectively move people and goods.

To the exclusion of all other alternatives, since the measure of "throughput" is the number of additional through lanes provided (e.g., "Does not maximize throughput because no additional through lanes are provided," pp. 2-49 and 50) or where underutilization of HOV/HOT lanes is alleged (e.g., "Does not maximize throughput because there is substantial underutilization of the HOV lanes," p. 2-42), the Lead Agency has established a set of criteria designed only to promote the construction of additional lane-miles (and not to more people or goods).

As indicated in "2010 Urban Congestion Trends – Enhancing System Reliability with Operations" (FHWA-HOP-11-024, 2010), the FHWA states that "[t]oo much traffic demand and/or not enough supply causes congestion" (p. 4). Because the DEIR/S focuses exclusively on "increased supply," the alternative's analysis ignores congestion reduction opportunities associated with "reduced demand," only one-half of the available strategies that could be formulated to reduce congestion are ever considered. In "Final Report - Traffic Congestion and Reliability: Linking Solutions to Problems" (LSP) (July 19, 2004), the FHWA notes that a "key approach to the problem of congestion involves managing the demand for highway travel. These strategies include providing a variety of options that result in more people traveling in fewer vehicles, trips made during less congested times, or trips not made (at least in a physical sense)" (emphasis added) (p ES-12).

As defined in the State CEQA Guidelines, the term "project" means "far more than the ordinary dictionary definition" (14 CCR 15002[d]). Similarly, "CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language" (14 CCR 15003[f]).

In LSP, the FHWA asks: "Is Success Possible Against Congestion?" In response, it notes that "past successes tend to be localized. Multiple and systematic strategies for addressing congestion are required, given that demand is increasing on an already stressed highway and transit system" (LSP, p. ES- 13). "History has taught us that no single strategy can effectively address congestion – only through a combination of strategies can congestion be controlled" (p. 1-1). Since the DEIR/S lacks any evidence or analysis of "multiple and systematic strategies," the best that the Lead Agency can seek to accomplish is a "localized" improvement. By focusing exclusively on micro-scale improvements, neither the proposed action nor the alternatives thereto are defined in a manner promoting a broader solution to the problem that the Department purports to address in the DEIR/S nor are environmental effects of macro-scale actions ever examined therein.

As reported by the FHWA: "The effect of strategies aimed at controlling VMT growth – and controlling congestion in general – can have a dramatic impact on controlling congestion growth. Strategies that reduce VMT directly can lead to a substantial slowdown in congestion growths. Likewise, congestion mitigation strategies can have the same effect by increasing physical capacity, shifting demand, and improving roadway operations. In other words, congestion mitigation strategies can produce the same effect as reduced VMT growth. When used in combination, demand management and mitigation strategies can have a powerful impact on congestion growth" (emphasis added) (LSP, p. 3-8). Reducing congestion, therefore, involves at least a two-pronged strategy (i.e., demand management and mitigation strategies) that need to be pursued in combination. Only a single strategy (i.e., congestion mitigation) is, however, presented in the DEIR/S. An obvious alternative to the proposed action (to increase

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capacity) is to control VMT growth. As a result, both half the problem and half the solution have been totally ignored.

Besides its benefit in reducing congestion (as stated by the FHWA), VMT reductions have been identified by the Lead Agency as one of "four primary strategies for reducing GHG emissions from transportation sources" (p. 4-51). However, rather than reducing congestion, the proposed action has the potential to substantially increase congestion. As indicated in the DEIR/S:

(1) "Existing daily vehicle miles of travel in the study corridor is 4,063,000" (p. 3.1.6-21);
(2) "Under Alternative 1, on I-405, between SR-73 and I-605 in 2020, daily VMT is anticipated to have increased by 651,000, compared to the existing condition and by 1,080,000 in 2040" (p. 4-24);
(3) "On I-405, between SR-73 and I-605, in 2020, daily VMT under Alternative 1 is anticipated to be greater than under the no-build condition by 318,000, compared to the existing condition daily VMT of approximately 4 million. In 2040, daily VMT under Alternative 1 is anticipated to be greater than under the no-build condition by 525,000, compared to the existing condition daily VMT of approximately 4 million" (p. 4-35);
(4) On I-405, between SR-73 and I-605, in 2020, daily VMT under Alternative 2 is anticipated to be greater than under the no-build condition by 540,000, compared to the existing condition daily VMT of approximately 4 million. In 2040, daily VMT under Alternative 2 is anticipated to be greater than under the no-build condition by 894,000, compared to the existing condition daily VMT of approximately 4 million" (p. 4-39); and
(5) "On I-405, between SR-73 and I-605, in 2020, daily VMT under Alternative 3 is anticipated to be greater than under the no-build condition by 605,000 compared to the existing condition daily VMT of approximately 4 million. In 2040, daily VMT under Alternative 3 is anticipated to be greater than under the no-build condition by 1,013,000, compared to the existing condition daily VMT of approximately 4 million" (p. 4-44).

As further noted by the FHWA: "Adding new freeways or additional lanes to existing freeways will add large amounts of capacity to the roadway network. However there are other components of the transportation system that can be enhanced that will alleviate congestion, albeit in a more localized area. Widening arterial roads, providing street connectivity, provide grade separations at congested intersections and providing high-occupancy vehicle (HOV) lanes all will help to mitigate congestion. Also, adding capacity to the transit system, whether it is to the bus system, urban rail system or commuter rail system will assist in relieving congestion on the roadway network. Finally, adding capacity to the intercity rail system can reduce the use of highways by trucks" (LSP, p. 4-1). With the exception of HOV lanes, none of these FHWA-recognized congestion-reduction strategies have been addressed in the DEIR/S. **101**

By directly adding to total VMT, at best, the proposed action represents a band-aid not a path to the cure. To suggest that the proposed action is wrong-headed would be to ignore the benefits that congestion mitigation can offer. However, by ignoring the root cause (i.e., traffic growth), the singular focus of the DEIR/S is, at best, myopic and promises only a short-term, localized solution. In what is, at best, at old mind-set, at least with regards to the proposed action, Caltrans appears to perceive its purpose to be "build more freeways," thus committing current and future generations to automobile and truck dependency and necessitating the need for more freeway expenditures "down the road." Since the "preferred" alternative appears to be the one that involves the largest expenditure of public funds, some people might call that "job security."

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Section 15003(j) of the State CEQA Guidelines states that "CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement." As E.E. Schattschneider wrote: "All forms of political organizations have a bias in favor of the exploitation of some kinds of conflict and the suppression of others because organization is the mobilization of bias. Some issues are organized into politics while others are organized out" (The Semi-Sovereign People, 1961). In this context, "bias" constitutes the preoccupation with certain points of view and the simultaneous neglect of others. With regards to the DEIR/S, contrary to the requirements of CEQA, the Department's apparent bias is evident by its focus solely on "supply," absence of focus on "demand," and consideration of only new freeway lane-miles to the detriment of other accessibility-based and congestion-reducing options (e.g., "a TSM/TDM Alternative as an effective stand-alone alternative does not meet the project purpose" [p. 2-4] and "[t]he No Build Alternative is not considered a viable project alternative because it would not achieve the project's purpose" [p. 2-26]). 102

As indicated in a Memorandum from Mary E. Peters, Administrator, FHWA and Jennifer L. Dorn, Administrator, FTA to FHWA Division Administrators and FTA Regional Administrators (Subject: Guidance of "Purpose and Need"), dated July 23, 2003 and included in the SAFETEA-LU Guidelines, the following guidance is presented with regards to the preparation of purpose and need statements in NEPA documents: "The purpose and need statement serves as the cornerstone for the alternatives analysis, but should not discuss alternatives. The alternatives analysis is the place in the document for explaining how the considered range of alternatives meet the purpose and need. Care should be taken that the purpose and need statement is not so narrowly drafted that it unreasonably points to a single solution" (emphasis added) (p. 2). In addition, under NEPA, in Simmons v. U.S. Army Corps of Engineers (1997), the court cautioned agencies not to write purpose and need statements so narrowly as to "define competing 'reasonable alternatives' out of consideration (and even out of existence)." 103

Caltrans' website asserts that it is the mission of that State agency to "improve mobility across California" and to "maximize transportation system performance and accessibility." While freeway improvements constitute one possible manifestation of that mission, that singular strategy is not indicative of the range of physical improvements (e.g., maximize throughput) and operational actions (e.g., optimize operations) that could be undertaken in furtherance of that mission and advancement of the project's P&N.

4.3 Rejected Alternatives

The stated P&N of the proposed action is to: "[1] Reduce congestion; [2] Enhance operations; [3] Increase mobility, improve trip reliability, maximize throughput, and optimize operations; and [4] Minimize environmental impacts and right-of-way acquisition" (p. S-1). The Lead Agency subsequently uses one or more of those purpose statements as the basis for rejecting possible project alternatives.

In seeking to apply that P&N to the evaluation of possible project alternatives, the Lead Agency has misinterpreted the provisions of the State CEQA Guidelines. As specified, in part, therein, "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives or be more costly" (emphasis added) (14 CCR 15126.6[b]). As such, the Lead Agency cannot exclude a potentially viable alternative whose implementation includes the prospects of reducing or

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eliminating a significant environmental effect because it does not accomplish one of the stated project purposes (objectives) to the same extent that another alternative might.

Since the Lead Agency currently lacks the funds to implement any of the build alternatives examined in the DEIR/S, it would appear disingenuous to reject another, otherwise feasible, alternative based, in whole or in part, on cost considerations (e.g., "The high cost of Alternative M3 also contributes to the determination that the alternative is not viable," p. 2-42; "The high cost of Alternative M5 also contributes to the determination that the alternative is not viable," p. 2-42; "The high cost of Alternative M6 also contributes to the determination that the alternative is not viable," p. 2-43; "The high cost of Alternative M8a also contributes to the determination that the alternative is not viable," p. 2-45; "The high cost of Alternative M9 also contributes to the determination that the alternative is not viable," p. 2-46; "The high cost of Alternative M10 also contributes to the determination that the alternative is not viable," p. 2-47; "The high cost of Alternative M11 also contributes to the determination that the alternative is not viable," p. 2-47; "The high cost of Alternative M12 also contributes to the determination that the alternative is not viable," p. 2-48; "The high cost of Alternative M13 also contributes to the determination that the alternative is not viable," p. 2-49); however, estimated "cost" is identified by the Department as a basis for the rejection of alternatives identified in the MIS. 104

The DEIR/S appears to present a double standard. Although "[n]one of the conceptual alternatives including fixed guideway or BRT in the median of the freeway were included in the final evaluation due to their high costs and/or their ROW impacts" (p. 2-2), none of the three build alternatives presented in the DEIR/S avoid "ROW impacts" and "[f]ull funding has not been identified for any of the proposed build alternatives and remains an unresolved issue" (p. S-39). In what appears to be an apparent inconsistency, project alternatives are rejected because they exceed the existing budget; however, each of that build alternatives examined by the Lead Agency also exceed the existing budget. Similarly, project alternatives have been rejected because of their potential ROW impacts; however, each of the build alternatives examined in the DEIR/s will also have ROW impacts. 105

Similarly, "costs" are only referenced in a short-term context (i.e., construction) and do not include long-term maintenance costs, administrative and management costs, financing and other debt service costs, and/or opportunity costs.

Although one of the stated purposes is to "minimize environmental impacts and right-of-way acquisition" (emphasis added) (p. S-1), the Lead Agency uses only a portion of that purpose statement (i.e., minimize right-of-way acquisition) as the primary basis for rejecting a number of possible alternatives. While the City generally supports the Lead Agency's desire to "minimize" ROW acquisition (particularly with regards to real property within Seal Beach), the term "minimize" appears problematic in that it may place too much emphasis on square footage calculations of affected properties over the broader objective of facilitation of movement of people and goods. There may exist situations where a small change in ROW acquisition would yield substantial congestion and mobility benefits but, pursuant to the Department's own criteria, a lesser performing alternative is deemed more desirous than another better performing option. For example, MIS Alternatives 5, 6, 7, 8, 8a, 9, 10, 11, and 12 are all rejected, in major part, because the Lead Agency asserts it "[h]as unacceptably high ROW impacts as measured by the number of single-family dwelling units and number of acres to be acquired" (pp. 2-42, 2-43, 2-44, 2-45, 2-46, 2-47, and 2-48). Since no reference to commercial uses is presented, it would appear that impacts upon ROW acquisition impacts affecting existing commercial uses is viewed by the Lead Agency differently that impacts on residential uses. 106

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In rejecting each of those alternatives, the DEIR/S specifies the number of "single-family dwelling units" (SFDU) that will be impacted; however, with regards to Alternatives 1, 2, and 3, the Lead Agency fails to disclose the number of affected SFDU, identifying only the number of "parcels" (pp. 3.1.1-20 and 3.1.1-31) that will be impacted. For example, with regards to the rejected MIS alternatives, between 67 and 200 SFDU (34.5 to 59.6 acres) will be affected. With regards to the three build alternatives, between 90 and 108 parcels (12.65 to 13.93 acres), including existing commercial uses (e.g., "Full acquisition of commercial properties has been limited to five parcels," p. 2-4) will be affected. By offering up different forms of measurement for both the rejected and pursued alternatives, the Lead Agency appears to be seeking to enflame public sentiments against the MIS alternatives while under-valuing the corresponding effects of the three build alternatives. 107

With regards to "ROW acquisition and relocation," the DEIR/S presents an internally inconsistent analysis. As indicated in the DEIR/S, Alternative 1 will affect "90 public and privately owned parcels" (p. 3.1.1-20), Alternative 2 will affect "91 public and privately owned parcels" (p. 3.1.1-31), and Alternative 3 will affect "108 public and privately owned parcels" (p. 3.1.1-31). However, the CIA states that Alternative 1 will affect "[u]p to 155 public or privately owned parcels"; Alternative 2 will affect "[u]p to 173 public or privately owned parcels"; and Alternative 3 will affect "[u]p to 189 public or privately owned parcels" (Table S-1, p. S-4). As a result, although minimization of ROW impacts is purported to be a key criteria with regards to both the formulation of the proposed action and elimination of potential alternatives, it is not possible to clearly ascertain the extend of ROW impacts attributable to the three build alternatives presented in the DEIR/S. 108

It has to be assumed that the above referenced number of "public and privately owned parcels" relates only to those which will be directly impacted and does not include other residential and non-residential uses. Absent from the DEIR/S is any attempt to identify, quantify, or illustrate the precise or general location of those "businesses" that could be impacted during construction and/or that may suffer a detrimental change to patronage once construction has been completed, much less explain the nature and duration of potential business disruption (e.g., "Construction at major interchanges could disrupt local business operations," DEIR/S, Table S-1, p. S-15). To the extent that the Lead Agency seeks to argue the benefits or reduced traffic on local arterials (e.g., "increase in mobility and operations of the freeway and roadway network would contribute to the increase in property tax base, sale tax revenue, and property values," CIA, p. S-6), the life of many businesses is dependent upon the volume of traffic traveling along abutting streets. 109

Pursuant to Section 15125(c) of the State CEQA Guidelines, "[t]he EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." 110

The DEIR/S states that "the proposed project would not normally affect tax revenue unless the use of the parcel is significantly affected" (CIA, p. 6-4); however, absent from the environmental analysis is any description of what might constitute a "significant affect." Evident of both the absence of objectivity and thoroughness of the environmental analysis can be found in the assertion that "[p]roperty values within the project area could be affected by displaced businesses, changes in the visual environment, improved access to community facilities and other residential areas, and nearby community enhancement projects" (CIA, p. 4). While "improved access" is toted as a basis for alleging an increase in property valuation (e.g.,

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"Increase in mobility and operations of the freeway and roadway network would contribute to the increase in property tax base, sale tax revenue, and property values," CIA, p. S-5), absent from the DEIR/S is any reference to or discussion of short-term or long-term impediments to access resulting from the proposed action (e.g., street closures) and how those actions could produce negative economic ramifications.

Similarly, the Lead Agency states that "[d]ecreased congestion along the I-405 corridor has the potential to allow regional motorists, as well as local residents, to reach businesses more efficiently, thereby allowing for increased visitation, faster customer turn-around and, consequently, increased revenues. This would be especially true for restaurants, retail stores, and shopping centers (e.g., IKEA and the South Coast Plaza) within the directly impacted area, as they are often destinations for residents and visitors" (emphasis added) (CIA, p. 6-3). When it appears beneficial to support the Lead Agency's predetermined conclusions, the DEIR/S asserts that freeway congestion adversely impact local businesses (e.g., South Coast Plaza); however, when it appears beneficial to argue that construction activities (when freeway ramps will be closed in their entirety for "up to 30 days" (RCS, Table 1, pp. 4 thru 6)) will not significantly affect those same businesses, the Lead Agency argues the loss of freeway accessibility is not significant (e.g., "There are no businesses that rely solely on freeway traffic, as they primarily serve local clientele that utilize surface streets to access the businesses," RCS, pp. 7 and 8). Although "[r]amps that provide access immediately adjacent to the South Coast Plaza (South Coast Drive NB off-ramp), Bella Terra Mall (Beach Boulevard off-ramps) or the Westminster Mall (Bolsa Avenue NB and Goldenwest SB off-ramps) will not be closed from November 1st to Jan 31" (RCS, p. 18), there are many other businesses located in proximity to closed freeway ramps and traffic detours that are also dependent upon seasonal shoppers. By acknowledging the dependence that many retailers have on revenues derived during key shopping periods, the Lead Agency must fairly and equitable consider the totality of businesses so affected and not single out only three centers to the detriment of all others. 111 112

In what appears to be a continuing application of a double standard, the Lead Agency states that "[a]ll temporary long-term closures are supported by adequate detours. . .and a robust local arterial street network. Access to all business will be maintained during construction of the I-405 improvement project and all are accessible from alternate freeway off-ramps and utilizing the local streets. Based on the short-term and temporary nature of the closures (10 to 30 days), the increased travel times and distances would not result in either a substantial economic effect on businesses or substantial delays or travels cost for residents or business patrons" (emphasis added) (RCS, p. 19). At least in one instance (i.e., Fairview Road Northbound Off-Ramp), "24,000 AADT [annual average daily traffic]" (RCS, p. 9) will be diverted onto local streets for up to 30 days. The Lead Agency, however, asserts that the proposed project is, in part, needed because "[a]s a result of the levels of traffic congestion on the freeway, traffic is being diverted to nearby arterials thereby impairing arterial mobility" (MIS, p. 55). As a result, in the perspective of the Department, "nearby arterials" are not, in fact, a "robust" system but a system that is currently operating at over capacity conditions as a result of existing congestion along the I-405 Freeway. Again, when convenient and fruitful, local arterials are "robust"; however, when a different argument is needed, those same roadways suddenly become impaired. 113

NEPA requires that federal agencies "consider every significant aspect of the environmental impact of a proposed action" and "inform the public that [they have] indeed considered environmental concerns in [their] decision-making process" (Earth Island Institute v. United States Forest Service [2003]). With regards to the adequacy of the alternatives analysis, the City believes that there are inherent flaws in the Lead Agency's methodology. A total of 17

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topical issues were examined in the DEIR/S (i.e., land use; growth; farmlands/timberlands; community impacts; utilities/emergency services; traffic and transportation/pedestrian and bicycle facilities; visual/aesthetics; cultural resources; hydrology and floodplains; water quality and stormwater runoff; geology/soils/seismic/topography; paleontology; hazardous waste/materials; air quality; noise; energy; and biology). Based on the project's potential to produce significant environmental effects, those 17 topical issues were determined to warrant detailed project-specific analysis. With regards to the alternatives analysis, by electing to self-imposed blinders with regards to the rejected alternative's potential impacts (i.e., minimize right-of-way acquisition), absent an analysis of those same 17 topical issues, the Lead Agency is unable to objectively and fairly balance the full range of environmental and socioeconomic impacts and purported benefits and make requisite findings with regards to each alternative.

In assessing the environmental superiority of an alternative, all 17 environmental resource areas must be taken into account. The environmentally superior alternative is the alternative found to have an overall environmental advantage compared to the other alternatives based on all the impact analysis in the DEIR/S. Determining which of the alternatives is environmentally superior or even feasible involves judgment and depends on many factors, as well as requiring a weighing of one type of impact against another type (e.g., weighing short-term effects against long-term effects or weighing effects on the natural environment against effects on the human environment). Any methodology that ignores 16 of the 17 relevant or potentially relevant environmental issues and involves no balancing or weighting of those or other environmental effects only serves to minimize the range of possible alternatives brought forward for public consideration and prematurely excluding others. **114**

4.4 Selected Alternatives

The DEIR/S consumes three pages (pp. 2-14 through 2-17) outlining how each of the three build alternatives contain "common design features" (i.e., are all the same). In comparison, it takes less than a page (pp. 2-17 through 2-18) to identify the "unique design features" (i.e., minor variations) of each alternative. As described therein: (1) "Alternative 1 generally does not have any unique features" (p. 2-17); (2) "Alternative 2 would add a second GP lane in the northbound direction from Brookhurst Street to the SR-22/7ih Street interchange and a second GP lane in the southbound direction from the Seal Beach Boulevard on-ramp to Brookhurst Street" (p. 2-18); and (3) "Alternative 3 would add a tolled Express Lane in each direction of I-405 from SR-73 to SR-22 East. . .The policies governing operation of the Express Lanes in Alternative 3 are additional features unique to this alternative" (p. 2-18).

With regards to the near identical nature of the three build alternatives, the DEIR/S notes:

> In terms of pavement width, Alternative 3 has similarities to both Alternatives 1 and 2. By adding both an express lane and a general purpose lane, the overall width of the proposed paving most closely matches that proposed for Alternative 2 for most of the corridor, except for the area north of SR-22/Valley View where it resembles Alternative 1. The major difference in Alternative 3 is the addition of a direct connector bridge between SR-73 and I-405 (VIA, p. 57)

As such, based on their commonality, the three options constitute only minor variations of generally the same project. As such, the DEIR/S neither provides the project's decision makers with a range of reasonable alternatives (14 CCR 15156.6) nor fosters informed decision making (14 CCR 15002[a][1]). **115**

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Under NEPA, a federal court (Northern Plains Resource Council v. Lujan [1989]) noted that NEPA does not require a separate analysis of alternatives which are not significantly different from alternatives actually considered or which have substantially similar consequences. Under CEQA, the court noted that the State CEQA Guidelines require that EIRs describe a range of reasonable alternatives to the proposed project. That requirement is "applicable only to the project as a whole, not the various facets thereof" (Big Rock Mesas Property Owners Association v. Board of Supervisors [1977]). Although acknowledging the existence of minor differences among Alternatives 1, 2, and 3, as a result of the lack of substantive variation, the Lead Agency has failed to present a "range of reasonable alternatives" allowing for a clear choice in the manner in which the stated P&N could be attained. **116**

To the extent that each alternative were truly unique (e.g., "The analysis of this alternative assumes the design exceptions that are unique to this alternative," DEIR/S, p. 2-5), each alternatives would be expected to generate unique transportation travel patterns within and surrounding the general project areas. The alternative improvements (e.g., I-405 Freeway mainline project sections) would, therefore, be expected to create differing levels of congestion and cause people to make differing transportation choices (i.e., varying modes choices and travel patterns), thus causing differing traffic impacts for each of the three build alternatives. The Traffic Study, however, indicates that "a single demand forecast was prepared. Forecasts for each of the alternatives utilize the same total traffic volumes on a segment" (p. 2.2-3). As a result, as further evidence of the absence of clear distinctions between alternatives, the traffic projections and associated analyses do not present unique area travel patterns associated with each of the alternative. **117**

4.4.1 Alternative 1

As specified in the OCTA's "Renewed Measure M Transportation Investment Plan," adopted on July 24, 2006, "Project K (San Diego Freeway [I-405] Improvements between the I-605 Freeway in Los Alamitos area and Costa Mesa Freeway [SR-55])" "improvements shall adhere to recommendations of the Interstate 405 Major Investment Study (p. 13). As identified in the MIS, "[MIS] Alternative 4 is the Locally Preferred Strategy (LPS) for improvements to I-405 between I-605 and SR-73. The LPS provides for an additional general purpose lane in each direction on the freeway between I-605 and Brookhurst Street. It includes auxiliary lanes linking on-ramps to downstream off-ramps at numerous locations in the corridor. . .The preparation of the environmental documents and the associated engineering will revisit in substantially more detail many of the same topics included in the Major Investment Stucy. The environmental documents will be prepared in light of the OCTA identification of [MIS] Alternative 4 as the LPS" (pp. 92-93). MIS Alternative 4 is represented to be Alternative 1 in the DEIR/S (i.e., "Only one build alternative, Alternative 1, which was MIS Alternative 4, has been retained as a viable alternative and is fully evaluated in this document" (p. 2-3).

As a result, in accordance with the OCTA's "Renewed Measure M Transportation Investment Plan," Alternative 1 should be identified as the LPS or the "preferred project." This designation in the DEIR/S is critical because it serves to alert the project's stakeholders of the Lead Agency's intent, thus allowing affected parties to ascertain the objectivity and presence of inherent bias in the environmental analysis. **118**

Despite the Lead Agency's declaration that the two scenarios are the same, it is not immediately evident that DEIR/S "Alternative 1" is the same as "MIS Alternative 4." As indicated in the MIS, "[t]he capital cost of [MIS] Alternative 4 is $490 million. It is the least expensive of the build

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alternatives. It is the narrowest of the build alternatives and requires the least additional right-of-way. Because it has the narrowest cross section of the build alternatives it requires the shortest bridge spans. Except for the area north of Seal Beach Boulevard, the existing freeway centerline is maintained in [MIS] Alternative 4. Much of the existing pavement and grading can be used. The roadway components, including the additional general purpose lane on the freeway in both directions north of Brookhurst Street to I-605, account for $480 million of the capital cost. The remaining $10 million is for the transit components including the capital costs associated with providing reduced headways on routes identified in Section 3.3" (pp. 70-71). With regards to congestion relief, "[MIS] Alternative 4 provides a reduction of 3.9 million hours" (p. 44). In addition, "Alternative 4 has a 12-15% reduction in general purpose lane travel time during the peak periods. It also is forecast to have a 3-10% improvement in HOV lane travel times" (p. 44).

In contrast, the DEIR/S states that "Alternative 1 would add a single GP lane in each direction on I-405 from Euclid Street to the I-605 interchange. Preliminary cost estimates for this alternative are $1.3 billion" (p. 2-5). Similarly, the "lane schematic" of MIS Alternative 4, as presented in Table 5-1 in the MIS (p. 87), differs substantially from the "lane configuration, northbound," as presented in Figure 2-1 (p. 2-6) and Figure 2-2 (p. 2-7) in the DEIR/S. Based on the Lead Agency's declaration that MIS Alternative 4 "is" DEIR/S Alternative 1, these differences and their rationale need to be fully addressed, including an explanation why the estimated cost nearly tripled. **119**

4.4.2 Alternative 2

Since Alternative 2 appears to generally exist within a similar ROW as Alternative 1, it would appear that, if Alternative 1 were to be selected for implementation, at some later point in time, Alternative 2 or a variation thereof could be brought forward as a subsequent expansion plan. Absent from the DEIR/S is any declaration that the freeway improvements contemplated therein constitute anything other than a short-term response to an identified need or that selection of one alternative negates any other alternative and/or the possible conversion of shoulder areas to travel lanes. Unclear is whether that latter action (or any design or operational modification) would necessitate additional environmental review under CEQA and NEPA and, if so, what type of review would occur. **120**

Once finalized, could Caltrans approve a lower intensity alternative (such as Alternative 1) and subsequent use that same documentation for a later expansion project (such as Alternatives 2 or 3)? Are there any existing limitations or authorizations allowing Caltrans to convert an existing GP or HOV lane into a HOT lane? **121**

4.4.3 Alternative 3

As required under Section 21003.1(b) of CEQA: "Information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce the effects shall be made available as soon as possible by lead agencies, other public agencies, and interested persons and organizations." In addition, as specified under the State CEQA Guidelines, an adequate project description shall contain a description of: (1) the "precise location and boundaries of the proposed project", (2) a "clear written statement of objectives sought by the proposed project," including the "underlying purpose of the project"; and (3) a "general description of the project's technical, economic, and environmental characteristics" (emphasis added) (14 CCR 15124).

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As indicated in correspondence from Arthur T. Leahy, OCTA's former CEO to OCTA's Highway Committee (Subject: Consideration of the San Diego Freeway Improvement Project for Future High-Occupancy Toll Lane and Design-Build Authority), dated January 19, 2009, the CEO made the following request to the OCTA's Highway Committee: "Approve the consideration of the San Diego Freeway (Interstate 405) Improvement Project for the implementation of high-occupancy toll lanes utilizing the design-build and public-private partnership method of procurement and authorize staff to move forward with further evaluation of high-occupancy toll lanes and next steps in the project development process and any future project nomination process." In addition, the CEO noted that "[t]here are numerous benefits to adding HOT lanes to the Interstate 405 Improvement Project. The HOT lanes could function much like the 91 Express Lanes, with OCTA being the owner and a private operator managing the lanes. The additional costs of the HOT lanes compared to building general purpose lanes would be minimal and would be far outweighed by the revenues anticipated to be generated" (pp. 1 and 3). Although that report was submitted substantially in advance of the release of the NOP and NOI (August 26, 2009), absent from the DEIR/S is any reference to, discussion, or analysis of the formation of a "public-private partnership" (P3) or the conveyance of any portion of the I-405 Freeway or the management thereof to a "private [profit-motivated] operator."

As proposed, the "private operator" would have control and management responsibility over both the HOT and HOV lanes (e.g., "The tolled Express Lane and the existing HOV lanes would be managed jointly as a tolled Express Facility. . . From SR-22 to I-605, the existing HOV lane and the second HOV lane that is being built as part of the WCC Project would become part of the tolled Express Facility. p. 2-10). Clearly, declaration of the Lead Agency's intent to pursue a "design-build and public-private partnership method of procurement" constitutes a component of the project's "economic characteristics" (within the meaning of 14 CCR 15124).

Additionally, contemplated is the conveyance of not only the "express facility" located along that segment of the I-405 Freeway which is explicitly addressed in the DEIR/S but also other freeway segments extending for an unspecified distance beyond those limits, including, but not necessarily limited to, those associated with the WCC. As a result, by the OCTA's own admission, the proposed action is not confined to the limits identified in the DEIR/S but encompasses a larger (undisclosed) geographic area. The Lead Agency, therefore, presents a truncated project description (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus [1994]) which fails to address the whole of the contemplated action (14 CCR 15378). **122**

As further indicated in correspondence from Will Kempton, OCTA's CEO to OCTA's Regional Planning and Highway Committee (Subject: Update on the Interstate 405 Improvement Project Alternatives, Business Models, and Delivery Option), dated April 16, 2012, a "P3 Concession option" (p. 2) is being considered. However, the DEIR/S contains no discussion of a possible "P3 Concessionaire" and/or the possibility that "[a]ll revenues would go to the private developer." Since toll proceeds could potentially be used to fund mitigation plans and programs and/or compensate abutting municipalities for the impacts attributable to the freeway or toll road, the OCTA's consideration of conveyance of those revenues to a non-public entity constitutes an important project feature whose potential impacts (e.g., projected revenues unavailable for alternative use; implications with regards to the setting of toll rates; consequences of the potential bankruptcy of the concessionaire) have not been addressed by the Lead Agency. **123** **124**

Referencing correspondence from William Kempton, OCTA's CEO to OCTA's Regional Planning and Highway Committee (Subject: Outline of the Proposed Project Delivery

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Organizational Approach for the Interstate 405 Improvement Project), dated June 4, 2012, a "If Project Alternatives 1 or 2 are selected as the build alternative, OCTA would probably need to obtain its own design-build authority through the legislative process. . .If Project Alternative 3 is selected as the build alternative, a provision of Streets and Highways Code 143, passed as SB 4 X2 in February 2009, would authorize design-build for the Project and tolling for the Express Lanes" (p. 3). Because it could have ramifications beyond the proposed project, the potential impacts of all requisite enabling legislation (e.g., amendments to Section 6800 of the California Public Contract Code; authorizing design-build legislation), the prospects of legislative passage, and the ramifications of need to be addressed in the DEIR/S. 125

Section 6800 of the Public Contract Code allows Caltrans to enter into a maximum of 10 design-build contracts for State highway, bridge or tunnel projects, and local transportation entities may enter into a maximum of five contracts for local street or road, bridge, tunnel or public transit projects. Section 6800 does not impose a minimum cost threshold on eligible projects, but all 15 projects must be authorized (i.e., approved) by the California Transportation Commission (CTC), and must be slated to receive funding from state transportation funding programs. Section 6800 requires Caltrans to be the "responsible agency for the performance of project development services, including performance specifications, preliminary engineering, prebid services, the preparation of project reports and environmental documents, and construction inspection services." The design-build authority under Section 6800 sunsets on January 1, 2014; however, "[c]onstruction of the proposed project is planned to commence in 2015" (p. 2-26).

Because it is dependent upon OCTA's ability to secure authorizing enabling legislation, based on the speculative nature of those efforts, it must be concluded that Alternative 3 is not a reasonable alternative. Although the court's ruling was in the context of alternatives raised by stakeholders, it would appear to have equal application to alternatives presented by a project sponsor. The Supreme Court has noted: "There is reason for concluding that NEPA was not meant to require detailed discussion of the environmental effects of 'alternatives' put forward in comments when these effects cannot be readily ascertained and the alternatives are deemed only remote and speculative possibilities, in view of basic changes required in statutes and policies of other agencies -- making them available, if at all, only after protracted debate and litigation not meaningfully compatible with the time-frame of the needs to which the underlying proposal is addressed" (North Buckhead Vermont Yankee Nuclear Power Corp. v. Natural Resource Defense Council [1978], quoting Natural Resource Defense Council v. Morton [1972]). It is unclear how the Lead Agency can approve a build alternative dependent upon enabling legislation absent that legislation. Similarly, if so approved, it is unclear what pressures would be put on the legislature to rubber-stamp that legislation under the premise that environmental clearance had already been achieved and that delay or denial could result in the forfeiture of discretionary federal funds to the State. 126

With regards to separate environmental justice considerations, under Alternative 3, SOVs may utilize the HOT lanes through the payment of a specified toll. As indicated in "The Social Impacts of Interstate Highway System, What Are the Repercussions" (Deakin, Elizabeth C., UCTC, June 2006), the author notes that "[f]or many, the social impacts of the Interstates have been positive: increased access, mobility, and options for individuals, households, and firms. For others, however - especially for those not able to own or drive a car - the Interstates have decreased access and mobility by undermining the viability of alternative modes of transport" (p. 16).

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As further indicated in "The Political Calculus of Congestion Pricing" (King David, Manville, Michael, and Shoup, Donald, UCTC, January 2007), the authors concluded: "Consider the prospects for congestion pricing in Los Angeles County, which has the worst traffic congestion in the United States. . .congestion pricing will initially make many drivers worse off. The demand for driving in Los Angeles (as most other urban areas in the US) is highly inelastic, so most people confronted with congestion pricing will end up paying the tolls or driving a less convenient route instead of switching to another travel mode or time. . .A study of congestion pricing's likely impacts in the Twin Cities made a similar point: for all but two small groups - transit users and affluent drivers - the tolls would exceed the time saving" (pp. 113-114).

Absent from the DEIR/S is any discussion or analysis of potential environmental justice impacts associated with the establishment of HOT lanes extending along and beyond the declared project limits. 127

4.4.4 Alternative 4

On February 8, 2010, under Agenda Item 18 (Report on Traffic and Revenue Analysis for the San Diego Freeway [Interstate 405] Improvement Project and Contract Amendment), OCTA's Board of Directors "[a]uthorized staff to continue the analysis of four build alternatives for the San Diego Freeway (Interstate 405) Improvement Project through the environmental process."

As indicated in the NOP, Caltrans stated that four build alternatives will be considered, including "Alternative 4: Localized Improvements." As further indicated therein, "Alternative 4 provides an additional general purpose lane at various locations and improves various interchanges from Euclid Street to I-605" (p. 2). The NOP clearly distinguished "Build Alternative 4" from a separate "Baseline Alternative (No Build)." The "Baseline Alternative represents the 'No Build' alternative. No additional lanes or interchange improvements would be provided by this alternative" (p. 2). Similarly, the NOI identifies "Alternative 4: [sic] on I-405 from Euclid Street to I-605, providing additional general purpose lane at various locations and improving various interchanges" (p. 3) will be considered. Also, Caltrans' and the OCTA's "Public Scoping Notice" and "Newsletter" announcing the September 22, 23, and 30 and October 1, 2009 public scoping meetings included reference to "Alternative 4: Localized Improvements."

As indicated in SCAG's "Final Program Environmental Impact Report - 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy, SCH No. 2011051018" (April 4, 2012) (2012 RTP/SCS PEIR): "Since mixed flow lanes carry more traffic than any other component of SCAG's transportation system, mixed-flow capacity enhancements are also necessary to address traffic bottlenecks and relieve congestion on heavily traveled corridors" (p. 2-13). In direction contradiction to that acknowledgement, the DEIR/S notes: "Alternative 4 proposed to provide localized improvements within the I-405 corridor that could be fully funded and implemented with available revenue from Orange County's Renewed Measure M transportation sales tax initiative. Alternative 4 would neither provide additional capacity along the entire corridor nor enhance interchange operations. It would not meet the project purpose and was eliminated from further consideration in this Draft EIR/EIS. All elements of Alternative 4 are included in the proposed build alternatives. A description of Alternative 4, along with the reasons for its elimination from further consideration, is provided in Section 2.2.4, Alternatives Considered but Removed from Further Discussion" (p. 2-3 and 4). Section 2.2.4 (No Build [No Action] Alternative) of the DEIR/S, however, includes no further discussion of "Alternative 4: Localized Improvements," focusing exclusively on the "No Build Alternative" (pp. 2-23 through 2-26). Although the Lead Agency had committed to include "Alternative 4: Localized 128

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Improvements" in the DEIR/S (as a separate and distinct alternative from the "Baseline Alternative [No Build]"), the Department failed to provide that analysis and, through its false representation, limited public participation in the environmental review process.

The Department's subsequent exclusion of the "Alternative 4: Localized Improvements" from the DEIR/S has deprived the project's decision-makers and other stakeholders of both the opportunity to consider a reasonable range of alternatives and the ability to compare those options against the three build alternatives presented in the DEIR/S. Since the NOP and NOI both constituted a good-faith declaration of the Lead Agency's intent upon which the affected public must rely, the Department's subsequent exclusion of "Alternative 4" from the DEIR/S has deprived interested parties of the ability to provide meaningful pre-circulation comments to Caltrans for consideration in the preparation of the DEIR/S. **128**

4.4.5 TSM/TDM/Mass Transit Alternative

The NOP stated that the DEIR/S will include an analysis of the "Transportation Systems Management (TSM)/Transportation Demand Management (TDM)/Mass Transit Alternative." As described therein, the "TSM/TDM/Mass Transit Alternative includes activities that will maximize the efficiency of the present highway system and expand travelers' transportation choices in terms of travel time, route, quality, and convenience. It involves low-cost operational improvements, rather than major capital projects, including but not limited to auxiliary lanes, ramp metering, ridesharing, and traffic signal timing optimization" (p. 2). Similarly, the NOI identified a "Transportation Systems Management (TSM)/Transportation Demand Management (TDM)/Mass Transit Alternative; [sic] makes only low-cost operational improvements, rather than major capital projects, to maximize the efficiency of the present highway system and expand travelers' transportation choices" (p. 3). Also, Caltrans' and the OCTA's "Public Scoping Notice" and "Newsletter" announcing the September 22, 23, and 30 and October 1, 2009 public scoping meetings included reference to a "Transportation Systems Management (TSM)/Transportation Demand Management (TDM)/Mass Transit Alternative."

No "TSM/TDM/Mass Transit Alternative" has, however, been presented in the DEIR/S. Instead, the Lead Agency notes: "Although a TSM/TDM Alternative as an effective stand-alone alternative does not meet the project purpose, as explained in Section 2.2.4, Alternatives Considered but Removed from Further Discussion, the PDT [Project Development Team] has included TSM and TDM elements as part of Alternatives 1, 2, and 3 as described in Section 2.2.1, Common Design Features of the Build Alternatives" (p. 2-4). Section 2.2.1 (Common Design Features of the Build Alternatives) of the DEIR/S states: "Although TSM and TDM measures alone do not satisfy the purpose and need of the project, the following TSM and TDM measures may be incorporated into each of the build alternatives for the proposed project" (emphasis added) (p. 2-17).

Under CEQA, the terms "must" and "shall" identify mandatory requirements; however, the terms "may" and "should" are permissive, with discretion left to the Lead Agency (14 CCR 15005). As a result, no commitment is made by the Department that TSM and/or TDM measures will, in fact, be included in the proposed action. Similarly, under NEPA, "[t]he use of language such as 'recommend,' 'may,' 'should,' and 'can' is intended to describe CEQ policies and recommendations. The use of mandatory terminology such as 'must' and 'required' is intended to describe controlling requirements under the terms of NEPA and the CEQ Regulations" (76 FR 3848, January 21, 2011). **129**

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The Department's subsequent exclusion of both "Alternative 4" and the "TSM/TDM/Mass Transit Alternative" from the DEIR/S has deprived the project's decision-makers and other stakeholders of both the opportunity to consider a reasonable range of alternatives and the ability to compare those options against the three build alternatives presented in the DEIR/S. Since the NOP and NOI both constituted a good-faith declaration of the Lead Agency's intent upon which the affected public must rely, the Department's subsequent exclusion of those alternatives from the DEIR/S has deprived interested parties of the ability to provide meaningful pre-circulation comments to Caltrans for consideration in the preparation of the DEIR/S.

The Department appears to have been down this same road before. Referencing Environmental Council of Sacramento v. California Department of Transportation, (2008) the court noted:

> Petitioners acknowledge that Caltrans considered and rejected many alternatives during the scoping process [Citation]. Nevertheless, Petitioners allege that the EIR fails to discuss a reasonable range of alternatives because the EIR considered only two "build" alternatives - with little variation between them - and failed to consider a transit-only alternative [Citation]. The Court agrees. The EIR did not include an in-depth discussion of the transit-only alternative because SACOG's [Sacramento Council of Governments] HOV-US 50 Corridor Study suggested that both light rail extensions and HOV lanes were necessary to alleviate congestion in the corridor [Citation]. But even if this statement is accurate, it is not a proper basis to reject the transit-only alternative as infeasible [Citation]. The test is not whether the transit-only alternative is the best strategy to achieve the Project's objectives, but whether it is a reasonable alternative that could feasibly accomplish most of the basic objectives of the Project and avoid or substantially lessen one or more of the Project's significant effects [Citation]. In this case, the objectives of the Project are to improve mobility, provide an option for reliable peak period travel time, improve traffic operations by reducing congestion and travel time, use highway facilities as efficiently as possible, provide incentives for commuters to use carpools, vanpools, or buses during peak period travel, and identify projects and strategies to improve adjacent street system and thereby enhance neighborhood livability [Citation]. The transit-only alternative is a potentially feasible alternative that could accomplish most of the basic objectives of the Project, while potentially avoiding or substantially lessening one or more potentially significant effects [Citation]. Thus, the transit-only alternative is a reasonable alternative that merits discussion and comparison to the two build options discussed in the EIR. Because the EIR included only two build alternatives, with little variation between them, Caltrans failure to include an in-depth discussion of the transit-only alternative precluded informed decision-making and informed public participation and rendered the EIR's discussion of alternatives inadequate (Minute Order, p. 14).

Under NEPA, agencies are under an obligation to follow their own regulations, procedures, and precedents, or provide a rational explanation for their departure (Big Horn Coal Company v. Temple [1986]). Although "business as usual" (BAU) has a separate meaning with regards to assessing GHG emissions, because the DEIR/S obviously suffers from the same maladies as the document prepared by Caltrans in the above referenced case, it would appears (through the presentation of the same defective analyses) that the Department believes that it is not required to accept judicial directions with regards to the preparation of adequate environmental documentation. **130**

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4.4.6 No Build Alternative

Under NEPA, Section 1502.14(d) of the CEQ Regulations requires that the alternatives analysis in an environmental impact statement (EIS) "include the alternative of no action." As described in the CEQ Questions: "There are two distinct interpretations of 'no action' that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases 'no action' is 'no change' from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the 'no action' alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development" (Question 3[a]).

Under CEQA, the Lead Agency misrepresents the "no build alternative" and, thereby, fails to provide the project's decision makers with an accurate and adequate environmental analysis. As indicated in the State CEQA Guidelines, where the project is a development project on identifiable property, the following applies: "[T]he no project alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this no project consequence should be discussed. In certain instances, the no project alternative means no build wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment" (emphasis added) (14 CCR 15126.6[e][3][B]). 131

The State CEQA Guidelines further state that the "no-project" alternative is not necessarily the same as the environmental baseline (14 CCR 15126.6[e][1]).

With the exception of the "SR-22 WCC Project," the "Project EA 0J440K" (p. 2-23), and unspecified "Costa Mesa Freeway Improvements" (e.g., "The baseline conditions under the No Build Alternative would provide no additional lanes or interchange improvements to the I-405 corridor. The project area would continue to operate with no additional improvements with the exception that the two earlier committed projects [SR-22 West County Connectors (WCC) Project and the Costa Mesa Freeway (SR-55) Improvements would be implemented]." CIA, p. S-2), the Lead Agency represents the No Project Alternative as the maintenance of the status quo (e.g., "no improvements would be made to the I-405 corridor within the project limits," p. 2-23).

As indicated in the PSR/PDS: "The proposed project is currently funded with an estimated $500 million as part of the Renewed Measure M (local half-cent sales tax) freeway program. The Renewed Measure M program was reauthorized by the Orange County voters in November 2006, and it is set to begin in 2011 and sunsets in 2041. . .As part of an effort to reduce construction costs on the Renewed Measure M freeway projects, OCTA will be advancing the

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proposed project's Project Approval/Environmental Document (PA/ED) phase and fund this effort through the SAFETEA-LU demonstration funds and local Renewed Measure M matching funds" (emphasis added) (p. 38).

As indicated in correspondence from Will Kempton, OCTA's Chief Executive Officer to OCTA's Highways Committee (Subject: Update on Project Alternatives for the San Diego Freeway (Interstate 405 Improvement Project), dated August 17, 2009, the OCTA notes that "[t]o date, the focus of this evaluation has been on identifying what improvements could be built for the currently available funding (Alternative 4). . .The commitment in M2 is to add new lanes throughout the corridor, generally within existing ROW, from State Route 55 to Interstate 605, and Alternative 4 may not meet that commitment entirely" (p. 2).

Notwithstanding any declarations by the Lead Agency, it is noted that DEIR/S' Alternative 4, as referenced above, is not the same proposal as MIS Alternative 4, as identified in the MIS and purportedly carried forward by the Lead Agency as Alternative 1 in the DEIR/S (p. 2-3).

As indicated in the MIS, "[t]he Baseline Alternative (or No-Build Alternative) incorporates the funded and/or environmentally approved transportation improvements as of March 1, 2004. Highway improvements to the existing condition included in the Baseline are presented in Appendix 6.1. Within the study area, these improvements include: [1] Programmed headway and service improvements on the following OCTA transit routes: [a] 29 Beach Boulevard, [b] 43 Harbor Boulevard, [c] 47 Fairview, [d] 52 Huntington Beach-Santa Ana, [e] 64 Bolsa, and [f] 70 Edinger-Irvine Center; [2] Recently completed reconstruction of I-405 south of Euclid Street to SR-73 to provide additional travel lanes, auxiliary lanes, ramp braiding, and interchange improvements; [3] Construction of a northbound ramp from Hyland Avenue; [4] Addition of an auxiliary lane between Magnolia Avenue and Beach Boulevard; and [5] Addition of a second HOV lane in each direction north of the interchange with SR-22 (near Valley View Street) to I-605 including direct carpool lane connectors between SR-22 and I-405 and between I-405 and I-605" (p. 20-21).

As reported by the FHWA: "The effect of 'doing nothing' to the transportation system is probably intolerable. Under the two percent VMT growth rate – roughly a continuation of recent trends – peak-period congestion will worsen substantially" (LSP, p. 3-8). Doing nothing is obviously not an option available to the OCTA and Caltrans (i.e., OCTA's and Caltrans' mandates require affirmative actions). Assuming no funding augmentation, with $500 million (or $600 million) in allocated Measure M funds, based upon its own declarations, the OCTA would pursue other actions/measures to comply with the Measure M mandate. By again alleging that the proverbial 'sky is falling" (e.g., "Congestion along the corridor would not be alleviated, and the situation would deteriorate with time," p. 2-23), that its "hands are tied" (e.g., "This alternative would be inconsistent with many regional and local planning goals and policies [e.g., cut-through traffic within neighborhoods located adjacent to I-405 during congested conditions, noise attenuation via the construction of soundwalls, enhanced roadway and freeway operations]," p. 3.1.1-20), and that the impacts of the "no build alternative" are greater than the impacts of the proposed action (e.g., "Direct effects of the No Build Alternative would include continued deterioration of freeway and local interchange operations. Indirect and cumulative effects of the No Build Alternative could include increased effects on the communities related to increased commute times and traffic diversion through adjacent neighborhoods," p. 2-24), the Lead Agency misrepresents both its consequential actions and those future project area conditions that would likely exist should Alternatives 1, 2, and 3 not be implemented. 132

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To the extent that the Lead Agency seeks to define the project in a fashion that substantially deviates from its Measure M/M2 mandate and the purpose for which the funds have been allocated and fails to pursue a design option that can be reasonably implemented within the fiscal limits imposed by its available resources, it self imposes artificial constraints that promote an alternative agenda. With "$500 million" (or $600 million) in committed Measure M funding and a MIS that identifies a build alternative that can be implemented within that available budget (or close thereto), it has to be assumed that a No Build Alternative is both feasible and exists in the form of a $500 million (or $600 million) investment in localized freeway improvements. By asserting that "[t]he No Build Alternative is not considered a viable project alternative because it would not achieve the project's purpose" (p. 2-26) demonstrates that the "project's purpose" (as presented in the DEIR/S) is substantially different than the basis upon which Measure M/M2 funds were originally committed. Additionally, by indicating that Alternative 4 is not economically feasible, then the cost estimates which served as the factual basis upon which Measure M/M2 were passed were either intentionally underestimated or were so unprofessionally prepared as to bear no relationship to the stated improvements. Since the Lead Agency is now contemplating the expenditure of a purported "$1.7 billion" (p. 2-10) or more (purported to be $5.8 billion by OCTA's CEO), the accuracy of OCTA's cost estimating skills and the role that the Department has played in independently validating those costs (see Utahns for Better Transportation v. United States Department of Transportation [2002]) must be brought into question. **133**

The fact that OCTA's eyes ($1.1 to $5.8 billion) may be bigger that its stomach ($500 to $600 million) does not alleviate either the OCTA's or Caltrans' from their obligations to produce an adequate environmental analysis.

Similar to NEPA, the State CEQA Guidelines set out the dual character of the "no-project" alternative in situations where some other future development is likely under existing designations if the present project is disapproved. As stipulated therein: "The no project analysis shall discuss the existing conditions at the time the notice of preparation is published as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services" (14 CCR 15126.6[e][2]). Where the project is a development project on identifiable property, the following applies: "[T]he no project alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this no project consequence should be discussed. In certain instances, the no project alternative means no build wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment" (14 CCR 15126.6[e][3][B]). Because that description is not premised on existing entitlements, the expenditure of the $500 to $600 million in committed Measure M/M2 funds constitutes what would be "reasonably expected to occur."

Although recognizing that "[t]he existing condition is the 'CEQA Baseline' condition" (p. 4-23), the Lead Agency errors in stating that "[t]he No Build Alternative represents the 'baseline' condition" (Traffic Study, p. 1-8) and "[t]he No Build Alternative provides a 'baseline' for comparing impacts associated with the build alternatives. The baseline conditions under the No

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Build Alternative would provide no additional lanes or interchange improvements to the I-405 corridor. The project area would continue to operate with no additional improvements with the exception that the two earlier committed projects (SR-22 West County Connectors [WCC] Project and the Costa Mesa Freeway [SR-55] improvements would be implemented)" (CIA, p. S-2). The City asserts that the No Build Alternative, or a variation thereof, must include those improvements that could be reasonably accomplished through the expenditure of $500 to $600 million in committed Measure M/M2 funds. **134**

No other reference to the "Costa Mesa Freeway improvements" is presented in the DEIR/S. Further explanation of the nature and relevancy of those improvements is required, including an explanation why those improvements were not universally considered throughout the DEIR/S.

The DEIR/S' No Build Alternative does not meet applicable NEPA and CEQA requirements. **135**

4.5 Operational Performance

The role of the EIR is to make manifest a fundamental goal of CEQA, namely to "inform the public and responsible officials of the environmental consequences of their decisions before they are made" (Laurel Heights Improvement Association v. Regents of University of California [1988]). In citing CEQA, the court stated that "'[t]he EIR must contain facts and analysis, not just the bare conclusions of the agency' [Citation]. 'An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project' [Citations]. 'CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive' [Citation]" (Bakersfield Citizens for Local Control v. City of Bakersfield [2004] [Bakersfield]). "Failure to comply with the information disclosure requirements constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decisionmaking and informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements [Citations]" (Bakersfield, quoting from Dry Creek Citizens Coalition v. County of Tulare [1999]). Similarly, in Dry Creek Citizens Coalition v. County of Tulare (1999), the court stated that "[a]n adequate EIR must be 'prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences' [Citation]."

As indicated in the DEIR/S: (1) "Alternative 1 is considered a viable project alternative because it would achieve the project's purpose and need by accomplishing the following: [a] Reduce congestion; [b] Enhance operations; [c] Increase mobility, improve trip reliability, maximize throughput, and optimize operations; and [d] Minimize environmental impacts and ROW acquisition" (p. 2-8); (2) "Alternative 2 is considered a viable project alternative because it would achieve the project's purpose and need by accomplishing the following: [a] Reduce congestion; [b] Enhance operations; [c] Increase mobility, improve trip reliability, maximize throughput, and optimize operations; and [d] Minimize environmental impacts and ROW acquisition" (p. 2-10); and (3) "Alternative 3 is considered a viable project alternative because it would achieve the project's purpose and need by accomplishing the following: [a] Reduce congestion; [b] Enhance operations; [c] Increase mobility, improve trip reliability, maximize throughput, and optimize operations; and [d] Minimize environmental impacts and ROW acquisition" (p. 2-14).

As indicated in Caltrans' "Performance Measures for the Quarter Ending December 31, 2011" (Office of Strategic Planning and Performance Management, undated), it is the Department's

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broader objective to, "[b]y 2012, ensure that 100% of projects meet their approved purposes and need at project completion" (Objective 3.3, p. 22). The corresponding performance measure is the "[p]ercent of projects that meet their approved purpose and need at project completion" (ibid.). In the case of the proposed project, absent specified quantitative or qualitative standards, that performance measure is all but meaningless since there is no verifiable standard against which performance can be effectively judged. Merely stating that a specific project meets its "approved" P&N does not make it so absence of a qualitative or qualitative assessment of projected performance. **136**

What constitutes an "approved" purpose and need statement, what agency is responsible for that approval, and what is the process through which "approval" is vetted? How does Caltrans calculate full or partial attainment and evaluate performance? Was the proposed action's P&N and single objective (see p. S-1) "approved" and, if so, by who? **137**

As reported in "Suggested Procedures for Evaluating the Effectiveness of Freeway HOV Facilities" (Turnbull, Katherine F. Henk, Russell H., and Christiansen, Dennis L, February 1991):

> Many HOV facilities have been implemented without clearly defining the goals and objectives of the project. This lack of a clear understanding of the purpose and goal of the project makes evaluating the effectiveness difficult, since there is no way of knowing if the goal has been reached when the goal has not been defined. Compounding this problem in some cases is the use of objectives that either cannot be measured or are inappropriate.
>
> Many evaluations have been conducted using very general evaluation criteria. These measures may be as simple as a statement that the HOV lane should reduce travel times for bus and automobile commuters, without identifying the level of time savings that should occur. Thus, no benchmark or specific threshold is identified against which the project can be measured. If the HOV facility leads to any improvement in the general evaluation measure, the project is considered successful (p. 13).

The DEIR/S uses nebulous terms like "reduce," "enhance," "increase," "improve," "maximize," "optimize," and "minimize" (p. S-1); however, no effort has been made to: (1) define or quantify those terms so as to allow comparative evaluation; and (2) establish a yardstick above which conditions are deemed to be acceptable and below which they are deemed not. Freeway users might universally agree that "free flow conditions," "unrestrained speeds," and "extra-wide lanes" might be desirous; however, drivers accept some level of reduced flow and design constraints (e.g., speed limits) as trade-offs for living in southern California. Prior to stating that "we need this or that" (e.g., comparing "apples to apples" rather than "apples to oranges"), there needs to exist a more fundamental discussion concerning "what constitutes acceptable operational conditions" and "what types of trade-offs are reasonable, appropriate, and acceptable to fulfill broader societal goals." **138**

By defining the project "corridor" as a short segment of the I-405 Freeway and ignoring the benefits in a more programmatic approach to corridor planning, the only question now being asked is how many and what type of new lanes should be constructed along a defined segment (defined not by the boundaries of the condition that the proposed action seeks to resolve but by relatively arbitrary points of ingress and egress). As a profession, traffic engineers are now debating choices such as building or not building parking structures, asking whether the

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incentivization or decentivization of downtown parking produces the greatest potential to reduce inner-city traffic snarls (i.e., getting vehicles out of downtown areas).

The USEPA's OBNE notes that "[d]evelopment patterns have contributed to increased vehicle use. Investment in highway capacity encourages more vehicle travel by temporarily reducing travel time and costs. Dispersed, low-density development with significant distances between housing, jobs, schools, and shopping make walking, bicycling, or use of transit difficult for most trips. Urban design that emphasizes the automobile, such as large surface parking lots, wide streets, and a lack of sidewalks, make vehicle use more comfortable and safer than walking or bicycling, even for short trips" (p. 2).

The traffic modeling presented in the DEIR/S only serves to allow the Lead Agency and the affected public to answer the comparative question of which alternative is "better" with regards to the variables presented (i.e., vehicle throughput and relative speed). It does not, however, allow decision makers and stakeholders to ascertain whether different investment options (e.g., dedicated truck lanes, public transit, and bicycle lanes) may produce greater or lesser gains. **139**

The primary basis of the traffic study is vehicular throughput, defined as "the number of vehicles able to pass a fixed point along the corridor during the greatest hour of demand." This analytical approach focuses on vehicles passing particular points on the freeway but ignores a more critical measure of a transportation improvement, namely the movement of people and goods, particularly given our overburdened transportation system. Vehicle throughput does not provide complete disclosure of transportation impacts and mitigations (e.g., accommodation of added SOVs can adversely impact [a] the overall transportation system by reducing overall mobility and [b] the environment by increasing VMT) and results in a failure to consider other related transportation and environmental impacts beyond Caltrans' ROW. **140**

Although the DEIR/S uses a number of indices focusing exclusively on vehicle counts, such as "vehicles per lane per hour" (vphpl) and "vehicles per hour" (vph) (e.g., p. 3.1.6-75), the fundamental focus of transportation planning should more rightfully be directed toward the movement of people and goods (not only on the movement of automobiles and trucks). One of the criteria that should be appropriately utilized to evaluation performance relates to the number of people moved. Since HOVs would typically include more occupants that SOVs, an emphasis on vehicle throughput would not serve as a valid yardstick; however, person throughput is never considered. With regards to "vehicle throughput," as indicated in Table 11 (I-405 Improvement Project Alternatives Comparison - Vehicle Throughput), the Lead Agency makes specific representation as to performance (measured in percent improvement). Vehicle throughput is, however, measures against the Lead Agency's No Project Alternative which incorrectly assumes no improvements to the designated corridor, including those fully funding improvements identified in Alternative 4. **141**

Table 11
I-405 Improvement Project Alternatives Comparison - Vehicle Throughput

Performance	Alternative 1	Alternative 2	Alternative 3	No Build Alternative
SR-73 to Brookhurst Street	0%	0%	24%	Not specified
Brookhurst Street to SR-22 East	20%	40%	50%	Not specified
SR-22 East to I-605	13%	25%	23%	Not specified

Source: California Department of Transportation, Draft Environmental Impact Report/Environmental Impact Statement – San Diego Freeway Improvement Project, Orange and Los Angeles Counties, California, SCH #2009091001, Table 2-1 (I-405 Improvement Project Alternatives Comparison), p. 2-30

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In "What We've Learned about Highway Congestion," included in "Access – Transportation Research at the University of California" (Fall 2005), the author (Pravin Varaiya) notes: "A high-occupancy-vehicle (HOV) restriction reduces congestion by encouraging carpooling. But it also increases congestion in two ways. First, the restriction imposes a non-HOV congestion penalty by increasing congestion on the non-HOV lanes. Second, it imposes an HOV capacity penalty by decreasing the capacity of the HOV lane itself. Analysis of Bay Area data suggests that the effect of the combined penalties is larger than the positive carpooling effect. Thus, the likely net result of HOV restrictions in the Bay Area is worsening congestion. Bay Area data facilitate such assessments because the area's HOV lanes are time limited (5:00 to 9:00 a.m. and 3:00 to 7:00 p.m.), allowing us to compare traffic on the same freeway segments during and outside of HOV restriction periods" (p. 7).

"Bay Area data" would appear to have substantial relevancy in assessing the proposed project because much of the methodology cited in the DEIR/S was "developed by Bay Area Metropolitan Transportation Commission" (e.g., Traffic Study, pp. 2.5-25, 2.6-25, and 2.7-27). Why were "time limited" HOV lanes not included in the environmental analysis?

As further indicated in "Caltrans Strategic Plan 2007-2012" (December 17, 2007) and Caltrans' "Performance Measures for the Quarter Ending December 31, 2011" (undated), one of the Department's mobility goals states: "By 2012, reduce single occupancy vehicle (SOV) commute trips by 5%" (Objective 2.4). Pursuant to its strategic plan, strategies to accomplish that objective include: (1) "Work closely with local jurisdictions on land use issues to promote mode shift" (Strategy 2.4.1); (2) "Partner with stakeholders and region on implementing Transportation Demand Strategies" (Strategy 2.4.2); (3) "Establish baseline performance data for vehicle occupancy" (Strategy 2.4.3); (4) "Improve interconnectivity between modes (Strategy 2.4.4); (5) Complete California's HOV system" (Strategy 2.4.5); (6) "Partner with transit and rail authorities making transit options more useful, inviting, and less difficult to use" (Strategy 2.4.6); (7) "Increase support for non-motorized and promotion/incentives for use of other alternative means of transportation" (Strategy 2.4.7); and (8) "Assess the need for a Park and Ride Lot Program" (Strategy 2.4.8). The corresponding "performance measure" is the "percent of single-occupant vehicles compared to the total commute trips" (PM2.4A). As outlined in "Performance Measures for the Quarter Ending December 31, 2011," categories of "commute trips" include drove alone (single-occupant vehicles), carpooled, public transportation, walked, bicycle, motorcycle, other means, and worked at home. The performance report states that a reduction in SOV commute trips is the "desired trend."

Notwithstanding that Statewide policy declaration, under Alternative 3, Caltrans is proposing to allow SOVs to utilize the HOT lanes, thus creating an incentive for single-occupant travel and, in so doing, a disincentive for carpool formation. Although the Traffic Study alleges that "[t]he Express Lanes would encourage carpooling" (p. 1-12), the introduction of HOT lanes would appear to promote rather than curtain single-occupant automobile usage. As such, because the Department's Statewide goals appear divergent from project-specific objectives, the DEIR/S should explain this apparent dichotomy and describe how the introduction of HOT lanes will promote the attainment of Statewide "Objective 2.4." **142**

As specified in the FHWA's "Federal-Aid Highway Program Guidance on High Occupancy Vehicle (HOV) Lanes" (August 2006), "[e]ffective management of an HOV lane involves developing and using an HOV operation and enforcement plan, along with a performance-monitoring program (p. II-2). States implementing low-emission and energy-efficient and/or HOT vehicle exceptions must operate in accordance with the restrictions and requirements of

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Section 166(d) in Title 23 of the U.S.C. which established a minimum average operating speed that HOV facilities with exempted vehicles must maintain. In accordance therewith, the minimum average operating speed is defined at Section 166(d)(2)(A) as 45 miles per hour (mph) for an HOV facility with a speed limit of 50 mph or greater and not more than 10 mph below the speed limit for a facility with a speed limit of less than 50 mph.

The Federal Clean Air Act Amendments (CAAA) created the inherently low-emission vehicle (ILEV) program and TEA-21 allowed States to authorize ILEVs to use HOV lanes without meeting the occupancy requirements. Absent from the Lead Agency's air quality conformity analysis is any reference to or compliance with this authorization.

Recently approved regulations of the California Air Resources Board (CARB) require automobile manufacturers to offer more zero- or very low-emission cars (e.g., battery electric, hydrogen fuel cell and plug-in hybrid vehicles) in California starting with model year 2018. By 2025, one in seven new automobiles sold in California (roughly 1.4 million) must be ultra-clean.

As indicated in Table 2.5.10 (Speed Index and Demand-to-Capacity Ratio Summary – Alternative 1 [2040]), as presented in the Traffic Study, no segments of the designated corridor achieve that standard. As further indicated in Table 2.6.10 (Speed Index and Demand-to-Capacity Ratio Summary – Alternative 2 [2040]), with the sole exceptions of northbound Brookhurst to SR-22 East during the AM peak hour and southbound Brookhurst to SR-22 East in the PM peak hour, under Alternative 2, the HOV lane does not appear to meet the specified standard. Although the Lead Agency deems Alternative 2 to be a success (i.e., "Alternative 2 is considered a viable project alternative because it would achieve the project's purpose and need," p. 2-10), low-emission, energy-efficient, and HOT vehicles would be prohibited from using the HOV lane. Building in prohibitions on use by low-emission and energy-efficient vehicles would appear contrary to any P&N statement promoting the minimization of environmental impacts. No such disclosure is, however, presented in the DEIR/S. **143**

Referencing Table 2.7.10 (Speed Index and Demand-to-Capacity Ratio Summary – Alternative 3 [2040]), the City acknowledges that all segments of the corridor exceed the federal standard; however, because it was neither established as an objective nor examined by the Lead Agency, the Department never considers potential modifications to Alternative 2 (e.g., increased vehicle occupancy requirements) allowing utilization by low-emission and energy-efficient vehicles. **144**

Conversely, Section 166(d)(2)(B) provides that an HOV facility is considered degraded if average operating speed in the HOV lanes drops below 45 mph for 90 percent of the time over a consecutive 180-day period during morning or evening weekday peak hour periods (or both for a reversible facility). If HOT or low-emission and energy-efficient vehicles are allowed to use an HOV lane and the lane becomes degraded, Section 166(d)(1)(C) requires the State to limit or discontinue the use of the lane by the number of HOT vehicles and/or low-emission and energy-efficient vehicles necessary to bring the facility back to compliance or to take other actions that will quickly bring the operational performance up to the Federal standard. **145**

When exempted vehicles are allowed to operate on HOV facilities, the State must annually certify to the FHWA that it continues to meet all requirements of 23 U.S.C. 166, including those related to vehicle eligibility; operational performance monitoring, evaluation, and reporting; and enforcement. The State is required to include in its certification a clear demonstration that the presence of low-emission and energy-efficient or HOT vehicles has not caused the facility to become degraded (as defined by 23 U.S.C. 166[d][2][A]).

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For HOT lanes (pursuant to 23 U.S.C. 166[d]), the following additional elements are required in the annual certification: (1) the State must indicate the presence of a program that addresses how motorists can enroll and participate in the toll program; (2) the State must indicate that it has implemented a system that will automatically collect the tolls or indicate that such a system will be implemented in a reasonable period of time following establishment of the HOT lane; and (3) the State must demonstrate policies and procedures to manage demand for the facility by varying the toll amount, if necessary to ensure acceptable performance. Absent from the DEIR/S is any discussion of: (1) the existing facility's compliance with those standards; (2) the ability of Alternative 3 to conform therewith; and (3) operational and monitoring considerations proposed to ensure on-going attainment of operational performance requirements. In addition, based on those projects and other actions identified therein, the OCTA's 2010 LRTP identifies "level of improvement of the Year 2035 Unconstrained Plan over the Year 2035 Baseline" (p. 89). Those performance measures, as listed in Table 12 (Unconstrained Plan Performance Analysis), constitute potential performance standards against which individual project's can and should be judged. Absent from the DEIR/S, however, is any reference to those performance measures or any evaluation of the proposed action's furtherance or compliance thereof. **146**

Table 12
Unconstrained Plan Performance Analysis

Performance Measure	2035 Baseline	2035 Unconstrained Plan
Daily vehicle hours traveled	3.4 million	Reduce by 24%
Daily hours of delay due to congestion	1.5 million	Reduce by 58%
Average peak period freeway speed (AM)	29 miles per hour	Increase by 31%
Average peak period HOV speed (AM)	35 miles per hour	Increase by 32%
Average peak period roadway speed (AM)	13 miles per hour	Increase by 86%
Daily transit trips	144,000	Increase by 55%

Source: Orange County Transportation Authority, Destination 2035 – Moving Toward a Green Tomorrow, Table 5-12 (Unconstrained Plan Performance Analysis [Compared to 2035 Baseline), p. 89.

4.6 Toll Revenues

If a State chooses to implement variable or dynamic pricing on an HOV facility, a Section 166 (23 U.S.C. 166) toll agreement must be executed pertaining to the use of toll revenue collected from the operation of the facility. Specifically, tolls may be collected subject to the requirements of Title 23 U.S.C. Section 129, which mandates that all toll revenues will be used first for debt service, for reasonable return on investment of any private person financing the project, and for the costs necessary for the proper operation and maintenance of the facility (including reconstruction, resurfacing, restoration, and rehabilitation). Section 129 further provides that if there are any excess revenues, then the State may use these revenues for any purpose that is eligible under Title 23 as long as the State annually certifies that the facility is being adequately maintained. Section 166 further requires that the State, in using any excess toll revenue, give priority consideration to projects for developing alternatives to SOV travel and projects for improving highway safety.

To the extent that a public project produces revenues, those revenues constitute a component of the proposed action and are, therefore, a subject of the resulting environmental analysis. Absent from the DEIR/S, however, is any discussion of toll revenues, such as the amount anticipated, authorizations concerning and limitations regarding the use of those funds, and **147**

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OCTA's tentative plans concerning those public monies (e.g., "All toll revenues would go to the P3 Concessionaire"). Also, the Lead Agency does not specify whether a P3 agreement (including the allocation of public funds to private for-profit entities), as a component of the proposed action or a consequential result thereof, is subject to CEQA and/or NEPA compliance.

How would the conveyance of "all toll revenues" to a private concessionaire affect the ability of the OCTA and the Department to utilize those same revenue to pursue TSM/TDM programs or provide environmental mitigation in response to the proposed action? What are the projected gross and net revenues from Alternative 3 and how was that projection derived? What economic information is presented to or will likely be presented to the project's decision makers that has not been included in the DEIR/S? Why has the Lead Agency elected not to include any economic information in the DEIR/S? **148**

Since the DEIR/S does not address the generation or dispersion of toll revenues, design-build construction strategies, or P3 agreements, insufficient information is provided by the Lead Agency to submit meaningful comments thereupon. The City's inability to raise substantive comments should neither be construed by the Lead Agency as any endorsement of agency plans or proposals nor affirmation that construction and operational (e.g., "The operation of the tolled lanes would be funded by toll revenue, p. 2-3) issues regarding those items would not result in the generation of potentially significant environmental effects.

4.7 Consistency with Regional and Local Transportation Plans

4.7.1 Consistency with Regional Transportation Plans

As indicated in the DEIR/S, the "proposed project is included in the 2008 Regional Transportation Plan (RTP) and 2011 Federal Transportation Improvement Program (FTIP) and includes the following project description for the project [ORA030605]: "FROM SR-73 TO I-605 ADD 1 MF [mixed flow or GP lane] LANE EACH DIR AND PROVIDE ADDITIONAL CAPITAL IMPROVEMENTS, INCLUDING PROJECTS ORA045, ORA151, ORA120310" (pp. 1-1 and 4).

As indicated in the OCTA's "Project Study Report/Project Development Support" (July 2008): "The proposed project is included in the Southern California Association of Governments 2004 Regional Transportation Plan (RTP) as project ORA030605. The project was added to the RTP in Amendment #3, which was adopted June 7, 2007. The project is included in the RTP for study only. The project description would "construct on [sic] additional general purpose lane in each direction on I-405 and provide additional improvements from SR-73 to LA County line" (emphasis added) (p. 18). From these excerpts, with regards to conformity with the RTP, regional plan consistency only exists to the extent that a single mixed-flow (general purpose) lane where to be implemented (Alternative 1) (e.g., "Alternative 2 is not consistent with the RTP or FTIP," p. 3.1.1-31; "Alternative 3 is not consistent with the current RTP or FTIP, p. 3.1.1-32). Similarly, since ORA030605 was included "for study only," from that declaration, it cannot be assumed that the merely listing of that project equated to regional plan consistency. **149**

As indicated in the CIA, Alternatives 2 and 3 are "[c]urrently, inconsistent with the Regional Transportation Plan (RTIP) 2008" (p. S-4). The DEIR/S notes that "the design concept and scope for Alternatives 2 and 3 are substantially different from what was analyzed in the 2008 RTP" (emphasis added) (p. 4-5) and "Alternatives 2 and 3 will have to go through the SCAG RTP and FTIP amendment process prior to being able to determine consistency with the plans" (p. 4-5). As such, neither Alternatives 2 nor 3 can be deemed consistent with the RTIP. **150**

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On December 12, 2011, the OCTA Board approved the OCTA's "Express Lane Planning and Implementation Principles." As indicated, in part, therein: (1) "Design and management of the interface of express lane facilities with existing freeway, high-occupancy vehicle, and express facilities shall seek to achieve a consistent, seamless user experience"; (2) "Express lane projects shall not be implemented to replace committed projects to be funded with local transportation sales tax revenues"; (3) "Although Caltrans and Federal Highway Administration control highway operations, OCTA does not intend to replace existing mixed-flow freeway lanes with express lanes"; and (4) "Existing high-occupancy vehicle lanes may be functionally encompassed within an express lane, provided: (a) The total number of lanes is increased by the project; and (b) Both vehicle throughput and average vehicle occupancy levels can be maintained and/or improved" (emphasis added).

Absent from the DEIR/S is any reference to or analysis of the proposed actions consistency and compliance with OCTA's adopted "Express Lane Planning and Implementation Principles." However, since "[e]xpress lane projects shall not be implemented to replace committed projects," it would appear that Alternative 4 constitutes the only build alternative consistent with that policy document. What is the Lead Agency's definition of "committed projects"? **151**

In addition, absent from the DEIR/S is any analysis of the proposed action's consistency with the 2012 RTP/SCS. Since "[l]and use impacts would occur if the proposed project effects would conflict either with General Plan land use designations or zoning, or with applicable environmental plans and policies" (p. 3.1.1-20), the DEIR/S' failure to address (or even acknowledge the existence of) the 2012 RTP/SCS prevents the Lead Agency from determining the presence of potential conflicts with applicable plans and policies.

The 2012 RTP/SCS notes that the congestion management process (CMP) "requires and ensures that highway capacity projects that significantly increase the capacity of single occupancy vehicles (SOV) be developed in a comprehensive context that considers all possible alternatives, including transit, TDM and TSM strategies" (emphasis added) (p. 40). As a result of the inclusion of Alternative 3 and its allocation of finite capacity to SOVs to the deference of HOV+2, any assertion of regional plan consistency would necessitate that the proposed action's CEQA and NEPA documentation examine the project in a "comprehensive context" (e.g., program-scale corridor planning) and include an expanded analysis of both transit and TDM/TSM alternatives.

As further evidence of project fragmentation, ORA030605 has been included on the list of "FTIP Project" in the 2012 RTP/SCS. That project is described as "I-405 FROM SR-73 TO I-605 ADD 1 MF LANE EACH DIR AND PROVIDE ADDITIONAL CAPITAL IMPROVEMENTS. #317. COMBINED WITH ORA045, ORA151 AND ORA120310" (emphasis added) (p. 66). Although those "combined" projects are not separately identified in the 2012 RTP/SCS, referencing the "Orange County RTIP Project" list which was included in the 2008 RTP, the following additional projects have been identified: (1) ORA045 – "BOLSA AVE (CHESTNUT TO GOLDENWEST) WIDEN BOLSA AVE BRIDGE FROM 4 TO 6 LANES" (p. 47); (2) ORA120310 – "WESTMINSTER – GOLDENWEST BRIDGE WIDENING OVER I-405, ADD 1 SB LN (5 TO 6 LNS)" (p. 50); and (3) ORA151 – "BOLSA CHICA RD (DUNCANNON TO RTE 405 WIDEN FROM 4 TO 6 LANES" (p. 51). Although SCAG now defines ORA030605, ORA045, ORA151, and ORA120310 as a single project, improvements to "combined" local arterials and bridge overcrossings have been separately processed and have neither been identified as a part of the proposed action nor have the cumulative impacts of those improvements been incorporated into the Lead Agency's analysis of cumulative environmental effects. **152**

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4.7.2 Consistency with Local Transportation Plans

The determination of consistency of lack of consistency with local plans is a critical determination under NEPA. In Maryland-National Capital Park and Planning Commission v. U.S. Postal Service (1973), the Court stated: "When local zoning regulations and procedures are followed in site location decisions by the Federal Government, there is an assurance that such 'environmental' effects as flow from the special uses of land - the safety of the structures, cohesiveness of neighborhoods, population density, crime control, and esthetics - will be no greater than demanded by the residents acting through their elected representatives." Although a limited number of compatible policies may be identified, in whole, the City has determined that the proposed action is not sufficiently consistent with the Seal Beach General Plan. **153**

Based on their unique perspective and special expertise, the Lead Agency should defer to local government decisions concerning the interpretation and project-specific application of local plans and policies adopted by those agencies for the purpose of environmental protection.

5.0 ENVIRONMENTAL COMPLIANCE

CEQA contains a "substantive mandate" requiring public agencies to refrain from approving projects with significant environmental effects if "there are feasible alternatives or mitigation measures" that can substantially lessen or avoid those effects (Mountain Lion Foundation v. Fish and Game Commission [1997]). As specified in Citizens of Goleta Valley v. Board of Supervisors (1988): "CEQA defines 'feasible' as 'capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors' [Citation]. The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." Compliance with that "substantive mandate" requires that the Lead Agency both "describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project" (14 CCR 15126.6[a]) and "identify and focus on the possible significant impacts of the proposed project" (14 CCR 15126.2[a]). Absent from the DEIR/S is both a range of reasonable alternatives and objective analysis of the potential environmental effects of the proposed action. **154**

5.1 Tiering or Environmental Documents

CEQ Regulations (40 C.F.R. Parts 1500-1508) and FHWA regulations (23 C.F.R. 771.111[g]) recognize the use of tiering as one option for complying with NEPA. The intent if tiering is to encourage agencies to eliminate repetitive discussions and focus on the actual issues which are ripe for decision at each level of environmental review.

The genesis of the proposed action stems from the passage of Measure M in November 1990 and Measure M2 in November 2006. Each of the capital improvements projects identified therein constitute a "program" collectively addressing identifiable and interrelated traffic and transportation problems within Orange County. Additionally, projects that are consistent with applicable regional transportation plans can avail themselves of certain environmental standards and practices designed to promote both permit streamlining and environmental disclosure. Although both CEQA and NEPA encourage and promote the "tiering" of environmental documents, the Lead Agency has not elected to tier the DEIR/S upon the 2012

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RTP/SCS PEIR. It is assumed that the decision not to pursue tiering is the result of: (1) the 2012 RTP/SCS' broader focus on sustainability and the implications of that focus on alternative solutions and general aversion to SOVs; (2) the lack of consistency between the proposed action and the 2012 RTP/SCS; (3) an attempt to support the asserting that the proposed action has "independent utility and logical termini" and can be viewed as independent of other segments of the regional network; and/or (4) an attempt to avoid the disclosure of cumulative environmental effects, including the linkage between transportation and growth.

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As indicated in the SAFETEA-LU Guidelines: "The FHWA/FTA guidance on linking planning and NEPA describes considerations for using planning information in the NEPA process. In accordance with that guidance: [1] The purpose and need for a project can be shaped by goals and objectives established in a corridor or subarea study carried out by a state DOT, MPO [metropolitan planning organization], or transit agency as part of the statewide or metropolitan planning process; [2] A general travel corridor or general mode or modes (i.e., highway, transit, or a highway/transit combination) resulting from transportation planning analyses may be part of the project's purpose and need statement; and [3] If the financial plan for an MPO's long-range transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the purpose and need statement" (Question 33).

As further indicated in the FHWA's "Guidance on Using Corridor and Subarea Planning to Inform NEPA" (April 5, 2011): "In February 2007, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) issued statewide and metropolitan transportation planning regulations that implemented changes to Federal law as a result of Public Law 105-178, the Transportation Equity Act for the 21st Century (TEA-21) and Public Law 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The transportation planning regulations supplement authority under the Council on Environmental Quality (CEQ) NEPA regulations and allow the FHWA and FTA, as NEPA lead agencies, to use the results or decisions of in State department of transportation (DOT), metropolitan planning organization (MPO), or public transportation operator corridor and subarea planning studies as part of the environmental review process under NEPA so long as legal requirements are met. . .The statewide and metropolitan transportation planning regulations and Appendix A to 23 C.F.R. Part 450 allow for analysis from corridor and subarea studies to be fully utilized during project environmental review, when conditions in that regulation are satisfied" (pp. 1-2). "Corridor and subarea studies can be used to produce a wide range of analyses or decisions for FHWA review, consideration and possible adoption in the NEPA process for an individual transportation project, including: [1] The foundation for purpose and need statements; [2] Definition of general travel corridor and/or general mode(s); [3] Preliminary screening of alternatives and elimination of unreasonable alternatives; [4] Planning-level evaluation of indirect and cumulative effects; [5] Regional or eco-system-level mitigation options and priorities; and [6] Linkage with housing, development, economic, and environmental goals and analysis" (p. 5). Despite those benefits, no efforts have been made to either define the proposed action in the context of a broader planning-related corridor or utilize foundational work contained in SCAG's subarea plans.

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5.2 Fragmentation/Segregation

As indicated in the NSR: "I-405 is considered a bypass route to the Interstate 5 (I-5) Santa Ana/Golden State Freeway through Orange County and an important component of the county's transportation system" (emphasis added) (p. 1). As further indicated in the DEIR/S, the "I-405

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represents a major link to other freeway systems within the Orange County area and is a strategic component of the county's transportation system" (emphasis added) (p. 1-19). Webster defines a "system" as "[a] regularly interacting or interdependent group of items forming a unified whole." Although the Lead Agency recognizes that the I-405 Freeway is part of a larger functioning and interconnected "system," only a small part of that system has been considered in the DEIR/S. Absent from the DEIR/S is any discussion of the operation of the system as a whole or the relationship between its component parts. For example, to the extent that the I-405 is a "bypass route to the Interstate 5," then the converse is likely true (i.e., Interstate 5 is a bypass to the I-405). During the project's 4.5-year construction period, some number of drivers may, therefore, elect to divert their trips to the I-5 Freeway in order to avoid the construction zone. Similarly, once a toll is imposed, non-toll paying SOVs and HOV+2 (who might otherwise be charged a toll) may change their trip patterns to use the I-5 in lieu of the I-405 Freeway. Although the relationship between those two highways is acknowledged (i.e., "bypass"), no analysis of trip diversion between those two highways is presented.

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Pursuant to Section 1501.2(b) of the CEQ Regulations, agencies shall "identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses." The federal court (Fritiofson v. Alexander) has stated that CEQ's regulations require connected, cumulative, and similar actions to be considered together in the same EIS. Where proposals are functionally or economically related, those proposals must be considered in a single EIS.

In "Update on Project Alternatives for the San Diego Freeway (Interstate 405 Improvement Project)," as presented at the OCTA Board of Director's August 24, 2009 meeting, the OCTA noted that if the I-405 Freeway were to be "built for demand – up to 20 lanes [would be] needed" (p. 3). The PSR/PDS identifies a 2030 horizon year (e.g., "The design year used for the PSR/PDS is 2030 as approved by the PDT [Project Development Team]. Year 2030 is the current forecast year for OCTAM [Orange County Transportation Analysis Model] and the horizon year for the SCAG Regional Transportation Plan," p. 16).

In actuality, the forecast year for the 2012 RTP/SCS is not 2030 as indicated in the DEIR/S but 2035. As indicated in the DEIR/S' traffic analysis, a 2040 design year has been assumed (p. 3.1.6-39). If "up to 20 lanes" were determined to be "needed" by 2030, an even greater number of lanes would logically be needed in either 2035 or 2040. The Lead Agency states that the "No Build Alternative configuration would not accommodate future traffic demand" (p. 2-23). However, since OCTA itself states that "20 lanes [are] needed" by 2030, it is evident that none of the three build alternatives will "accommodate" projected future traffic demand. From those excerpts, it become evident that the proposed action constitutes only a short-term solution to identified "congestion" problems and that the proposed improvements include an eye toward subsequent expansion (e.g., "Alternative 3 would provide a full standard highway cross section, with 12-ft-wide mainline travel lanes and shoulders on the left and right sides in both directions," p. 2-11). As such, while building in flexibility for later expansion through retention of lane-sized shoulders, the Lead Agency recognizes but never discloses the anticipated need for subsequent improvements to the I-405 Freeway corridor beyond its stated horizon. Just as geographic boundaries cannot be arbitrarily set to avoid the analysis of "what's just around the corner," self-imposed blinders cannot be installed to avoid, at least a perception, of "what's up ahead."

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In certain circumstances, California authorizes the use of shoulders and/or narrow lanes on freeways as travel lanes. As indicated in the FWHA's "Efficient Use of Highway Capacity Summary – Report to Congress" (November 2010): "In dedicated shoulder-lane operations,

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either general purpose or HOV-specific capacity has been added through the permanent conversion of shoulders. Most HOV applications use the interior lane for HOV operations, while the exterior shoulder is used for general purpose traffic so as to maintain the same number of general purpose lanes that existed prior to implementation. A typical HOV application would convert a three-lane freeway with 12-ft lanes, 10-ft exterior shoulder, and 8-ft interior shoulder to 11-ft general purpose lanes, 14-ft (including buffer striping) HOV lane, 5-ft exterior shoulder, and 2-ft interior shoulder" (pp. 25-26). While "[i]t is always desired to have a minimum 12-ft lane width for all freeway travel lanes. . .with regard to temporary shoulder use, narrower lane widths can be acceptable due to the limited use and operating conditions during their use" (p. 35). Designed with a 14-foot wide interior shoulder and 10-foot wide exterior shoulder, the proposed I-405 Freeway improvements could be subsequently converted to readily accommodate both an additional HOV/HOT lane and an additional GP or transit-only lane. Within the general project area, such conversions have occurred along the I-5 Freeway. **159**

By maintaining shoulder widths conforming to the above standards, the Lead Agency appears acknowledge that additional capacity-enhancing efforts will be required in the future. The conversion of interior and exterior shoulders to temporary of permanent HOV and GP lanes would appear a logical "next step."

In accordance with CEQ Regulations, the purpose of cumulative effects analysis is to document agency consideration of the context and intensity of the effects of a proposal for agency action, particularly whether the action is related to other actions with individually insignificant but cumulatively significant impacts (40 CFR 1508.27[b][7]). Under NEPA, the federal court noted that "[p]lanning and building highways in a piecemeal fashion threatens to frustrate [the analysis of alternatives required by NEPA] by allowing a gradual, day-to-day growth without providing an adequate opportunity to assess the overall, long-term environmental effects of that growth" (Patterson v. Exon [1976]). Under CEQA, segmentation occurs when a single project is split into smaller components with the effect of avoiding analysis of the environmental impacts of the total project (Burbank-Glendale-Pasadena Airport Authority v. Hensler [1991]). The harm created by segmentation is that "a narrow view of a project could result in the fallacy of division, this is, overlooking its cumulative impacts by separately focusing on isolated parts of the whole." Accordingly, under CEQA, the term "project" is "given a broad interpretation in order to maximize protection of the environment" (McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District [1988]). An "impermissably truncated" project description severely distorted not only the actual project but the alternatives to the project. Even were the EIR is deemed to be adequate in all other respects, the selection and use of a "truncated project concept" constitutes a violation of CEQA (County of Inyo v. City of Los Angeles [1981]).

As indicated in Caltrans' "California HOV/Express Lane Business Plan 2009," excluding toll roads in Orange County (e.g., SR-73, SR-133, SR-241, and SR-261), "[a]s of July 2008, the existing HOV lane system had 1,424 existing lane-miles and 124 lane-miles under construction. Future expansion of the network includes 269 programmed lane-miles and 974 proposed lane-miles planned by state and local agencies" (p. 5). In that publication, no "express lanes" are "planned or programmed" along the I-405 Freeway between the I-605 and SR-73 Freeways. Although the proposed action constitutes a modification of and addition to the "California HOV/Express Lane Business Plan," by asserting that the proposed action has independent utility and logical termini" (DEIR/S, p. 1-24), the Lead Agency seeks to ignore the existence of and contributory environmental impacts of those functionally or economically-related facilities. **160**

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In Kings County Farm Bureau v. City of Hanford (1990), the court ruled that an EIR is deficient if it "avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling."

For example, the Department states that anticipated toll rates for travel through the designated 14-mile to 16-mile corridor may be $9.75 during peak period (p. 2-20). It is not inconceivable that tolls along the abutting limited-length "corridor" to the north (under the jurisdiction of the Los Angeles County Metropolitan Transportation Authority) and tolls along the abutting limited-length "corridor" length to the south (under the jurisdiction of the OCTA but potentially operated by a different P3 concessionaire) might also be "similar" (expressed in 2012 dollars). A driver's 42-mile to 48-mile morning commute to work might, therefore, cost $29.25 or, assuming those rates are reversed during the PM peak hour, $58.50 a day ($292.50/ week or $14,625/year).

As indicated in the Seal Beach General Plan (Housing Element), "[t]he area median income for Orange County in 2011 was reported as $84,200. For extremely-low-income households in Orange County, this results in an income of $27,700 or less for a four-person household, when adjusted for high housing costs" (p. II-7). Based on that median annual income, an Orange County resident using the proposed HOT lanes as a part of a daily commute to work would spend over 50 percent of their household income merely on toll fees. Toll fees would likely consume too large of a percentage of living costs even for occasional use. **161**

Similarly, as indicated in the LACMTA's "HOV Performance Program Evaluation Report," "[l]ow speeds encountered as vehicles in the carpool lanes approach the carpool lane terminus and experience delays reentering the general-purpose traffic stream. These delays can nullify travel time savings accrued upstream while traveling in the carpool lane" (p. 96). To the extent that the Lead Agency seeks to define the project "corridor" as only a segment of an interconnected network, the environmental analysis needs to acknowledge that substantial bottlenecks will be created at each end and that any alleged travel time savings may, in fact, be "nullified." By focusing exclusively on the identified corridor, insufficient information is presented to fully consider the traffic-related ramifications both to the north and to the south.

As indicated in "San Diego Freeway (I-405) Frequently Asked Questions" (USDOT, Caltrans, and OCTA, undated) (http://www.octa.net/pdf/405/faq.pdf):

> The maximum number of lanes northbound on I-405 under any of the current alternatives would be ten, including two carpool lanes. Conceptual engineering showed that two lanes would be terminated into SR-22/7th Street, three lanes (one carpool lane and two general purpose) would terminate into I-605 northbound, and five lanes (one carpool lane and four general purpose) would continue northbound on I-405 matching the existing condition in LA County. During the upcoming environmental and preliminary engineering phase, a detailed traffic study will be conducted to determine what potential traffic impacts might occur near the LA County line and how such impacts might be avoided, minimized, or mitigated (Question 20).

Despite the Lead Agency's declaration that potential bottlenecks attributable to lane merging near the County line will be examined in the DEIR/S, no such analysis is presented therein.

As outlined in 23 C.F.R. 771.111(f), in order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each EIS shall: (1) connect logical termini and be of sufficient length to address **162**

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environmental matters on a broad scope; (2) have independent utility or independent significance (i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made); and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. The FHWA's assessment of independent utility and logical termini occurs during the NEPA review and is intended to include consideration of whether the proposed action will result in a usable facility and will be a reasonable expenditure, even if no additional improvements in the area are made. **162**

Referencing the "HOV/Express Lane Business Plan 2009": "According to a report by Caltrans, nearly 50% of the HOV lanes in the state experience periods of degradation in the peak hour according to the federal definition – meaning that average speeds of 45 mph speed or lower have been measured more than 10% of the time" (p. 9). As such, "50% of the HOV lanes" in California share a similar malady. Rather than seeking a cure, Caltrans seeks to apply temporary solutions one freeway leg at a time.

Absent from the DEIR/S is any reference to the following current HOT/HOV lane projects: (1) "Draft Environmental Impact Report/Environmental Impact Statement and Section 4(f) Evaluation - I-710 Corridor Project, Los Angeles County, California, District 07-LA-710-PM 4.9/24.9, EA 249900" (Caltrans and LACMTA, June 2012) (I-710 Corridor DEIR/S); (2) "Final Environmental Impact Report/Environmental Assessment with Finding of No Significant Impact – The Interstate 10 (San Bernardino Freeway/El Monte Busway) High Occupancy Toll Lanes Project, SCH No. 2009061060" (Caltrans, April 2010); (3) "Final Environmental Impact Report/ Environmental Assessment with Finding of No Significant Impact – The Interstate 110 (Harbor Freeway/Transitway) High Occupancy Toll Lanes Project, SCH No. 2009061059" (Caltrans, April 2010); (4) "Draft Environmental Impact Report – Add One High Occupancy Vehicle Lane in Each Direction on the San Bernardino Freeway (Interstate 10) from Puente Avenue to State Route 57/71 in Los Angeles County" (Caltrans and LACMTA, November 2011); and (5) "Final Environmental Impact Report/Environmental Impact Statement -- Interstate 5 (Santa Ana Freeway) from State Route 91 in Orange County to Interstate 605 in Los Angeles County, California" (Caltrans and FHWA, June 19, 2007) (I-5 FEIR/S). Similarly, absent there from is any discussion of planned or proposed transit expansion projects including, but not limited to, the California High-Speed Rail Authority's "California High-Speed Train."

The Lead Agency states that "'[s]egmentation' may occur when a transportation need extends throughout an entire corridor, but environmental issues and transportation needs are inappropriately discussed for a segment of the corridor" (p. 1-24). The DEIR/S then goes on to conclude that "[t]he proposed project satisfies the requirements for independent utility and logical termini" (p. 1-22) and "[b]y meeting FHWA requirements for independent utility and logical termini, and offering several transportation improvements within these boundaries, the project avoids 'segmentation'" (p. 1-24). The City disagrees with that rationalization. Rather than presenting reasoned analysis of the Lead Agency's rationale for the establishment of "independent utility and logical termini," only a conclusionary statement is presented absent supporting documentation. Since improvements to other segments of the I-405 and I-605 Freeways (and other freeways in southern California) can be reasonably anticipated, by defining the project's "corridor" and "termini" in the manner presented, the Lead Agency presents an incomplete and flawed environmental analysis. **163**

As indicated in a Memorandum from FHWA's Director, Office of Environmental and Planning to Regional Federal Highway Administrators and Federal Lands Highway Program Administrators (Subject: Guidance on the Development of Logical Project Termini), dated November 5, 1993:

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"Logical termini for project development are defined as (1) rational end points for a transportation improvement, and (2) rational end points for a review of the environmental impacts. The environmental impact review frequently covers a broader geographic area than the strict limits of the transportation improvements. . .Choosing a corridor of sufficient length to look at all impacts need not preclude staged construction. Therefore, related improvements within a transportation facility should be evaluated as one project, rather than selecting termini based on what is programmed as short range improvements. Construction may then be 'staged,' or programmed for shorter sections or discrete construction elements as funding permits" (emphasis added) (p. 2). The FHWA further notes that "the termini chosen must be such that: [1] environmental issues can be treated on a sufficiently broad scope to ensure that the project will function properly without requiring additional improvements elsewhere, and [2] the project will not restrict consideration of alternatives for other reasonably foreseeable transportation improvements" (p. 9).

As stipulated in the State CEQA Guidelines, "CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language" (14 CCR 15003[f]). By seeking to treat congestion as a localized condition (evident only along a narrowly described segment of a major north-south freeway linking Orange and Los Angeles Counties) which can be cured by focusing only on a 14-mile or 16-mile long length of a single freeway (ignoring the adjoining segments of that same freeway feeding that congested link), the Lead Agency unreasonably confines the resulting environmental analysis to only that segment of the freeway system where short-term (insufficient) funding commitments have been made (ignoring the existence of other funding commitments by that same agency and assignable to other freeway segments).

The Lead Agency has already sought to fragment the larger transportation improvement project once by isolating the WCC from the proposed action (e.g., "construction of the SR-22 WCC Phase II Project is underway on the 2-mile segment of the I-405 that overlaps SR-22. The project will add two HOV lanes in the median of I-405 between SR-22 and I-605, along with HOV direct connectors at the I-405/SR-22 and I-405/I-605 interchanges," p. 2-1). By continuing to piecemeal highway construction projects along definable links, CEQA and NEPA compliance, as well as the environment those statutes were designed to protect, "die a 1,000 cuts." **164**

5.3 Undisclosed Project Facilities

NEPA stipulates that "connected actions" be considered as part of an EIS and CEQA stipulates that the project examined in an EIR must include the "whole of the action." That, however, is not the case with the proposed action. As indicated the AQR: "the following TSM and TDM measures may be incorporated into each of the build alternatives for the proposed project. . .[1] Pedestrians improvements would be added wherever possible; [2] Additional Park & Ride/Intermodal facilities would be added at various locations to integrate with Bus Rapid Transit (BRT), express bus, Go Local Metrolink Connectors, community circulators, and local bus. . .[3] Auxiliary lanes would be provided in various locations" (AQR, PM Conformity Hot Spot Analysis, August 1, 2007, unpaginated).

Although specific to the I-5 Freeway, the following excerpt from the I-5 FEIR/S would also appear to have relevancy to the proposed action: "Because the I-5 Corridor travels through Los Angeles and Orange Counties, compliance with the Los Angeles County CMP and Orange County CMP is required. Each of the cities within the study area is responsible for implementing the requirements of the CMP. The CMP must include a Transportation Demand Management **165**

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(TDM) component that includes a trip reduction and travel demand element that promotes alternative transportation methods, such as carpools, vanpools, transit, bicycles, and park-and-ride lots. The adoption of a TDM ordinance was required of every local jurisdiction within Los Angeles and Orange Counties" (emphasis added) (pp. 43-44). Referencing OCTA's "2011 Orange County Congestion Management Program" (CMP):

> Park-and-ride lots serve as transfer points for commuters to change from one mode of travel (usually single-occupancy automobile) to another, higher capacity mode (bus, train, carpool, or vanpool). Providing a convenient system of park-and-ride transfer points throughout Orange County encourages ridesharing and the use of higher capacity transit systems, which improves the efficiency of the transportation system. Park-and-ride lots are also a natural companion to Orange County's network of High Occupancy Vehicle (HOV) lanes and transitways on the freeways (p. 27).

Although "park-and-ride lots" are identified by Caltrans as required components of a CMP, identified the OCTA as "natural companions" to HOVs lanes, and listed as "TSM and TDM measures [that] may be incorporated into each of the build alternatives," no discussion of those lots is presented in the DEIR/S. While no definition of "natural companions" is presented, Webster defines "natural" as "having an essential relation with" or "occurring in conformity with the ordinary course of" or "existing in and produced by" or "having a physical or real existence." In the context of the DEIR/S, "natural companion" must, therefore, be interpreted as being integrally connected with the proposed action.

The Lead Agency states that the proposed project will include "bicycle and pedestrian facilities to further offset increased fuel consumption associated with the projected increase in VMT" (DEIR/S, p. 3.2.8-6). Those "bicycle and pedestrian facilities" are, however, neither specifically identified nor is their location discussed (even in the broadest fashion). To the extent that the Lead Agency seeks to place pedestrians and bicyclists in close proximity to freeway traffic, there may exist unknown and unaddressed health and safety issues which have yet to be evaluated in the DEIR/S. In Seal Beach, Almond Avenue is designated as a Class III bicycle route. How do project-related impacts to Almond Avenue affect the functionality of that roadway as a "bicycle and pedestrian facility"? To the extent that the proposed action impedes bicycle use, how would that action serve to "offset increased fuel consumption"?

Absent from the DEIR/S is any discussion or analysis of those "pedestrian improvements," "park & ride/intermodal facilities," "auxiliary lanes," and "added" public transit services and facilities represented to be associated with the proposed action. As such, based on their exclusion, the project would be expected to produce additional physical changes which have not been disclosed by the Lead Agency. Alternatively, as a result of there noticeable absence, OCTA can subsequently assert that, absent there inclusion in the DEIR/S, the agency has no authorization or obligation for their construction, construction, operation, and/or maintenance.

5.4 Other Related, Connected, Cumulative, and Similar Projects

As indicated in the DEIR/S: "There are no additional projects anticipated within or around the project area Therefore, no additional cumulative impacts are anticipated" (VIA, p. 59). In contrast, the CIA states that "[c]umulative impacts are addressed within the individual chapters of this CIA. Table 1-1 [Reasonably Foreseeable Projects] contains a list of [19] reasonably foreseeable projects which could be implemented during construction of the proposed project" (p. 1-20).

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Additionally, Caltrans recently prepared separate CEQA and NEPA documents for at least two other HOV lane project, including: (1) "Final Environmental Impact Report/Environmental Assessment with Finding of No Significant Impact – The Interstate 10 (San Bernardino Freeway/El Monte Busway) High Occupancy Toll Lanes Project, SCH No. 2009061060" (April 2010); and (2) "Final Environmental Impact Report/Environmental Assessment with Finding of No Significant Impact – The Interstate 110 (Harbor Freeway/Transitway) High Occupancy Toll Lanes Project, SCH No. 2009061059" (April 2010). Neither of those environmental documents nor does the DEIR/S identify one another as connected, cumulative, and similar actions nor do any of those documents consider the combined impacts of toll road development. Similarly, after a multi-year construction process that the City and its residents have had to endure, Caltrans is now completing the WCC. With regards to that project, the DEIR/S notes:

> On the portion of SR-22 that overlaps with I-405 within the project limits (I-405 PM 20.8/24.0), two projects – the I-405/SR-22 HOV Connector (EA 071621) and the I-405/I-605 HOV Connector (EA 072631) – are currently in the construction phase and are collectively referred to as the SR-22 West County Connectors (WCC) Project. The SR-22 WCC Project area includes the portion of I-405 between I-605 and SR-22 East and the portion of I-605 between I-405 and Katella Avenue. The SR-22 WCC Project will add a second HOV lane on I-405 in each direction from SR-22 East to I-605, and it will also provide structures to directly connect the HOV lanes between the I-405, SR-22 East, and I-605. During the design phase of the SR-22 WCC Project, the SR-22 WCC Project area was evaluated by the Department for system connectivity and compatibility with the proposed future I-405 Improvement Project (p. 1-20).

The Lead Agency represents the WCC, not as a related, connected, cumulative, or similar project, but as part of the existing "baseline" and, therefore, not incrementally contributing to the generation of cumulative environmental effects. That categorization only serves to circumvent the Lead Agency's obligation to analyze the cumulative effects of "other closely related past, present, and reasonably foreseeable probable future projects" (14 CCR 15355[b]).

Under NEPA, in Webb v. Gorsuch (1983), the federal court noted that, "[g]enerally, an administrative agency need consider the impact of other proposed projects when developing an EIS for a pending project only if the projects are so interdependent that it would be unwise or irrational to complete one without the others." Under CEQA, in San Franciscans for Reasonable Growth v. City and County of San Francisco (1987), the court "found the cumulative impact analyses of the EIRs to be insufficient because those impacts were evaluated using a list of projects which included only those projects already approved but not yet under construction and projects actually under construction [Citation]. We concluded that it would have been both practical and reasonable for the City to include in the cumulative analyses projects under environmental review, even if the projects had not yet surmounted all the 'regulatory hurdles' [Citation]." In compliance therewith, other related, connected, cumulative, and similar projects not considered in the DEIR/S are identified below.

- **2012 RTP/SCS**. SCAG notes that "the 2012 RTP includes a regional Express Lane network that would build upon the success of the 91 Express Lanes in Orange County and two demonstration projects in Los Angeles County planned for operation in late 2012. Additional efforts underway include the extension of the 91 Express Lanes to I-15 in Riverside County along with planned Express Lanes on the I-15. Also, traffic and revenue studies are proceeding for I-10 and I-15 in San Bernardino County" (emphasis

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added) (p. 15). As identified by SCAG, the "express/HOT lane network" includes those freeway segments presented in Table 13 (Express/HOT Lane Network).

Table 13
Express/HOT Lane Network

County	Route	From	To
Los Angeles	I-405	I-5 (North SF Valley)	LA/OC County Line
	I-11-	Adams Blvd (s/o I-10	I-405
	I and SR-110	Adams Blvd	US-101
	US-101	SR-110	I-10
	I-10	US-101	I-710
	I-10	I-710	I-605
LA, Orange	SR-91	I-110	SR-55
LA, SB	I-10	I-605	I-15
Orange	I-405	LA/OC Line	SR-55
	I-5	SR-73	OC/SD County Line
	SR-73	I-405	MacArthur
Riverside	SR-91	OC/RV County Line	I-15
	I-15	Riv/SB County Line	SR-74
	I-15	SR-74	Riv/SD County Line
San Bernardino	I-10	I-15	SR-210
	I-10	SR-210	Ford St
	I-15	SR-395	Sierra Ave
	I-15	Sierra Ave	6th Street
	I-15	6th Street	Riverside/SB County Line

Source: Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy, April 4, 2012, Table 2.6 (Express/HOT Lane Network), p. 56

Referencing the 2012 RTP/SCS PEIR, "The 2012-2035 RTP/SCS also includes an expansion of the existing Express/HOT lanes and toll road system in Orange County to address the congested commuter corridor between housing-rich Riverside County and jobs-rich Orange County. Additionally, improvements to several major corridors in other parts of the region are proposed to be financed by tolls, including the SR-710 Tunnel Gap Closure and the High Desert Corridor" (p. 2-13). As described and illustrated in the 2012 RTP/SCS, a large segment of the freeway system within southern California will include either new HOT or converted HOV lanes. Since presently only a segment of the I-91 Freeway contains a toll road, the regional implications of that "network" needs to be examined as a collective whole and the cumulative impacts addressed in the DEIR/S. **169**

In correspondence from the OCTA to SCAG, dated February 14, 2012 (Re: Comments on the Draft 2012 Regional Transportation Plan and Program Environmental Impact Report), as included in the 2012 RTP/SCS PEIR, the OCTA made no formal request to modify the description of ORA030605 in order to include or accommodate HOV/HOT lanes. The OCTA did, however, note that "[t]he draft RTP includes the implementation of a regional high-occupancy toll lane network. This network appears to utilize existing and planned high-occupancy vehicle lanes to generate new revenues by selling excess capacity to single-occupancy drivers. The proposed regional HOT lane network assumes

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that Orange County would include HOT lanes on Interstate 5 (I-5) between the San Diego County border and the southern end of State Route 73 (SR-73); along I-405 between the northern end of SR-73 and the Los Angeles County border; and along State Route 91 (SR-91) extending the Express Lanes west to the Los Angeles County border. On December 12, 2011, the OCTA Board approved the Express Lane Planning and Implementation Principles. OCTA requests that these principles be incorporated into the assumptions for segments of the regional HOT lane network that are within Orange County. Furthermore, the proposed HOT lane improvements to I-5, and SR-91 should be subject to further study to evaluate right-of-way impacts, community issues, and overall feasibility, prior to inclusion in the constrained plan" (emphasis added) (Response to 2012-2034 RTP/SCS Comments, Part III). Because the OCTA acknowledged the existence of a "regional HOT lane network" and promotes the development of "a consistent, seamless user experience," the cumulative impacts of other planned or proposed components of that network should be addressed either as a component of the proposed action or as contributors to the cumulative impacts examined in the DEIR/S. **170**

As further indicated in correspondence from the Transportation Corridors Agency (TCA) to SCAG, dated February 13, 2012 (Re: Comments on the Draft 2012 Regional Transportation Plan/Sustainable Communities Strategy and Program Environmental Impact Report), as included in the 2012 RTP/SCS PEIR: (1) "Tolled centerline miles in the region will increase from 61 in 2008 to 408 in 2035, including toll roads, express lanes, HOT lanes, and tolled truck lanes"; (2) "Toll roads and express lanes charge users a fee for travel"; (3) "The toll road system is designed to interrelate with transit service"; and (4) "SCAG has launched a two-year study of congestion pricing strategies that can provide needed transportation facilities" (emphasis added) (Response to 2012-2034 RTP/SCS Comments, Part III). This projected increase in toll-lane miles constitutes a fundamental change in freeway operations throughout southern California, extending substantially beyond the geographic confines of the proposed action.

The potential for congestion pricing to induce change in driving habits and travel patterns is acknowledged by SCAG. SCAG has noted that: (1) "The primary purpose of congestion pricing is to make important changes in the ways we use the scarce resources of roads and parking capacity" and "[c]ongestion pricing changes the way we drive by more accurately pricing the cost of a finite resource – roads and parking spaces" (Express Travel Choices Study, Frequently Asked Questions, January 13, 2011, pp. 4-5); and (2) "Tolling can have a significant impact on travel behavior" and "[t]hese effects can collectively become quite significant as prices increase" (emphasis added) (SCAG, Discrete Choice Models and Behavior Response to Congestion Pricing Strategies, May 11, 2011, Slide 20). Nowhere in the DEIR/S or in any other planning-related and.or environmental documentation (e.g., SCAG's "two-year study of congestion pricing strategies") are the larger impacts of that change examined. **171**

- **Express Travel Choices Study**. SCAG notes that "[t]he Riverside County Transportation Commission (RCTC) is in the process of working with the Orange County Transportation Authority (OCTA) to extend the SR 91 Express Lanes into Riverside County and is studying the potential for Express Lanes in the I-15 corridor. The San Bernardino Associated Governments (SANBAG) is studying possible Express Lane implementation in the I-10, I-15 and SR 210 corridors. Also, OCTA is including an Express Lane option in its proposed I-405 widening project between I-605 and SR 55" (Express Travel Choices Study, Frequently Asked Questions, January 13, 2011, p. 7).

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Absent from the DEIR/S is any discussion or analysis of the proposed "express lanes" on the I-10, I-15, SR-91, and SR-210 Freeways.

- **Destination 2035 – Moving Toward a Green Tomorrow.** As noted in San Franciscans for Reasonable Growth v City and County of San Francisco (1984), "probable future projects" can be interpreted as reasonably probable future projects. The court found that projects that are undergoing environmental review are reasonably probable future projects. In Gray v. County of Madera (2008), the court stated that "any future project where the applicant has devoted significant time and financial resources to prepare for any regulatory review should be considered as probable future projects for the purposes of cumulative impact." Each of the project's listed in OCTA's 2010 LRTP, therefore, constitute "probable future projects" for the purpose of cumulative impact assessment.

Presented in the OCTA's 2010 LRTP is a "full list of freeway projects included in the Year 2035 Preferred Plan," including "[l]ane additions for specific freeway and toll road segments between the 2008 Base Year and 2035 Preferred scenario" (p. 74). As indicated therein: "These projects draw from approved funding programs, including Measure M2, as well as recent and ongoing OCTA planning efforts that have analyzed transportation needs and opportunities throughout Orange County. The Preferred Plan of projects also considers available funding and financial resources over the course of the next 25 years. Particular emphasis is placed on the identification of a program of projects that can be implemented using the funding sources that are reasonably anticipated to be available" (emphasis added) (p. 71).

Because each of the following projects are proposed by the same "sponsor," they demonstrate OCTA's currently planned activities scheduled to occur within the proposed project's build-out period. The listing presented in Table 14 (Orange County Transportation Authority - Year 2035 Preferred Plan) is inclusive of only those projects located with Orange County, identified by the OCTA as components of the "Year 2035 Preferred Plan," and does not include any transportation system improvements located in Los Angeles County. Additional related, connected, cumulative, and similar projects is presented in the LACMTA's "2009 Long Range Transportation Plan" (October 2009).

The proposed action is listed among the above described projects. It is, however, noted that, with the singe exception of "throughput," the long-range plan's stated "goals and objectives" differ from the P&N described for the proposed action. As presented in the OCTA's 2010 LRTP, the OCTA's goals/objectives include: "(1) Expand Transportation System Choices; Expand access to travel options across all travel modes, improve connectivity to major destinations, and improve integration between transportation options. (2) Improve Transportation System Performance: Improvements to travel speeds, travel times, person throughput, and roadway and transit service levels. (3) Ensure Sustainability: Timely maintenance of transportation infrastructure, implementation of environmental protection strategies, and use of innovative project delivery methods to reduce taxpayer costs" (p. 1).

Since the proposed action is a component of the OCTA's broader implementation program, it is unclear why project-level objectives would differ so substantially from the program-level objectives presented in OCTA's 2010 LRTP. The rationale for this dichotomy should be addressed and an explanation presented how the project's P&N serves to promote the attainment of the goals and objectives presented therein. **172**

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Table 14
Orange County Transportation Authority - Year 2035 Preferred Plan

Category	Project	Description
Transportation System Management Projects	Interstate 5 HOV expansion from Pacific Coast Highway to Avenida Pico	Add one HOV lane in each direction from Pacific Coast Highway to Avenida Pico
	Interstate 5 HOV Lane Expansion	Add one HOV lane each direction from State Route 55 to State Route 57
	Interstate 5 HOV Lane Expansion	HOV ramp improvements at Barranca Parkway
	Interstate 405 HOT Project	Convert existing HOV lane to HOT, add one additional HOT lane each direction from State Route 73 to Interstate 605
	State Route 57 Improvements	Provide HOV interchange at Cerritos Avenue
	State Route 57 Improvements	Add one truck climbing auxiliary lane in the northbound direction from Lambert Road to Los Angeles County line
	State Route 57 Improvements	Add one HOV lane each direction from MacArthur Boulevard to Interstate 405
	State Route 73 HOV Connector	Add HOV lane connector to Interstate 405
	State Route 91/State Route 241 Interchange	Add HOV/HOT connector at State Route 241/State Route 91 interchange (eastbound on-ramp/westbound off-ramp)
	Freeway Service Patrol & Call Box Program	Continuation of motorist aid services
	Toll Roads Video Detection Demonstration Project	Image-based toll collection system demonstration project
General Purpose Improvements	Interstate 5 Improvements between State Route 55 and El Toro "Y"	Add one mixed-flow lane in each direction from State Route 55 to Interstate 405
	Interstate 5 Improvements from State Route 57 to State Route 91	Add one mixed-flow lane in each direction from State Route 57 to State Route 91
	Interstate 5 Improvements South of the El Toro "Y"	Add one mixed-flow lane in each direction from Avery Parkway to Alicia Parkway
	Interstate 5 Improvements South of the El Toro "Y"	Reconfigure interchange of Interstate 5 with Avery Parkway
	Interstate 5 Improvements South of the El Toro "Y"	Reconfigure interchange of Interstate 5 with La Paz Road
	Interstate Improvements Projects from State Route 55 to Interstate 5	Add one ancillary lane in the northbound direction from Jefferey [sic] Road to Culver Drive
	Interstate 405 Improvements Project from State Route 55 to Interstate 5	Add one mixed-flow lane in each direction from Interstate 5 to State Route 55
	Interstate 405 Improvement Projects from State Route 73 to Interstate 605	Add one mixed-flow lane in each direction from State Route 73 to Interstate 605
	State Route 55 Improvements	Add one mixed-flow lane in each direction from Interstate 405 to Interstate 5
	State Route 55 Improvements	Add one mixed-flow lane in each direction from Interstate 5 to State Route 22
	State Route 55 Improvements	Add one auxiliary lane in each direction between select on/off ramps through project limits from Interstate 405 to Interstate 5

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Table 14 (Continued)
Orange County Transportation Authority - Year 2035 Preferred Plan

Category	Project	Description
Purpose Improvements	State Route 57 Improvements	Add one mixed-flow lane in the northbound direction from Lincoln Avenue to Orangethorpe Avenue
	State Route 57 Improvements	Add one mixed-flow lane in the northbound direction from Orangewood Avenue to Katella Avenue
	State Route 91 Improvements from State Route 55 to Orange County/Riverside County Line	Add one westbound lane from State Route 241 to Gypsum Canyon Road
	State Route 91 Improvements from State Route 55 to Orange County/Riverside County Line	Add one auxiliary lane in each direction from State Route 241 to Green River Road
	State Route 91 Improvements from State Route 57 to State Route 55	Add one mixed-flow lane in the eastbound direction from State Route 57 to State Route 55
Interchange Projects	Interstate 5/Stonehill Drive Interchange	Add southbound off-ramp at interchange with Stonehill Drive
	Interstate 5 Local Interchange Upgrade	Improve interchange of Interstate 5 with Avenida Pico
Interchange Projects	Interstate 5 Interchange Upgrade	Reconstruct interchange of Interstate 5 with 1st Street/4th Street to increase weaving length to standard on southbound Interstate 5
	Interstate 5/Marguerite Parkway Interchange	Add interchange at Marguerite Parkway
	Interstate 5/Alicia Parkway Interchange Improvement	Improve interchange of Interstate 5 with Alicia Parkway
	Interstate 5/Los Alisos Boulevard Interchange	Add Interchange at Los Alisos Boulevard
	Interstate 5/North Irvine Traffic Mitigation Ramp Improvements	Improve access ramps to/from Interstate 5
	Interstate 405/South Bristol Braid Interchange Reconstruction	Reconfigure interchange of Interstate 405 with State Route 55 and Bristol Street
	Interstate 405/Irvine Center Drive/ North Irvine Traffic Mitigation Improvements	Improve various access ramps to/from Interstate 405
	Interstate 605 Freeway Access Improvements	Ramp improvements at interchange with Katella Avenue
	State Route 55/Meats Avenue Interchange	Construct on-ramp/off-ramps at the interchange to State Route 55
	State Route 57 Improvements	Ramp improvements at Lambert Road
	State Route73/Glenwood Drive/Pacific Park Drive Interchange	Construct southbound ramp interchange with Glenwood Drive/Pacific Park Drive
	State Route 91 Improvements from State Route 57 to State Route 55	Improve interchange with State Route 55
	State Route 91 Improvements from State Route 57 to State Route 55	Improve interchange with Lakeview Drive
	State Route 91/Gypsum Canyon	Improve access ramp at Gypsum Canyon Road

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Table 14 (Continued)
Orange County Transportation Authority - Year 2035 Preferred Plan

Category	Project	Description
Interchange Projects	State Route 91/Fairmont Boulevard Interchange	Add interchange and overcrossing at Fairmont [sic] Boulevard
	State Route 241/Jeffrey Road Interchange	New interchange at Jeffrey Road
Other Projects	Soundwall Program	Construct soundwalls along freeways to minimize traffic noise from freeways into residential neighborhoods
	State Highway Operation and Protection Program (SHOPP)	Various freeway safety improvements, as needed
Environmental Mitigation	Environmental Cleanup and Freeway Mitigation Programs	Transportation-related water quality program and acquisition/restoration habitat, respectively

Source: Orange County Transportation Authority, Destination 2035 – Moving Toward a Green Tomorrow, Table 5-2 (Preferred Plan Freeway Projects), pp. 75-76

As reported in the FHWA's "Final Report - Traffic Congestion and Reliability: Trends and Advanced Strategies for Congestion Mitigation" (September 1, 2005), "vehicle merging maneuvers" have "the most severe effect on traffic flow" (p. 2-4) and "[a]s the traffic grows on a roadway with fixed capacity, bottleneck-related congestion becomes increasingly dominant" (p. 2-9). "Physical bottlenecks are locations where the physical capacity is restricted, with flows from upstream sections (with higher capacities) being funneled into them. . .On much of the urban highway system, there are specific points that are notorious for causing congestion on a daily basis. These locations – which can be a single interchange, a series of closely spaced interchanges, or lane-drops – are focal points for congestion in corridors; major bottlenecks tend to dominate congestion in corridors where they exist" (LSP, pp. 2-1 and 2).

The DEIR/S notes that "[d]uring the 54-month construction period, construction-related delays along the I-405, I-605, SR-22, and SR-73 freeways and interchanges, as well as on the surrounding local arterials, are anticipated" and "[l]ane reductions and restrictions are also anticipated on mainline, connector, ramp and arterial roadway facilities to accommodate construction activities. These restrictions may include: [1] Narrower lane and shoulder widths; [2] Reduction in number of lanes; [3] Elimination of separate turn lanes at intersections; [4] Speed reduction due to sharper lane transition/taper" (TDM, p.10, see also DEIR/S, p. S-13).

Although it does nothing to alleviate the above described problems, accepting virtually no responsibility, the OCTA's "2011 Orange County Congestion Management Plan" asserts that "public outreach" (e.g., "OCTA and Caltrans developed a comprehensive public outreach program for commuters impacted by construction projects and improvements on Orange County freeways. The outreach program alleviates traffic congestion during freeway construction by providing up-to-date ramp, lane, and bridge closure information; as well as suggestions for alternate routes and travel modes," p. 26), in combination with the actions of other agencies (e.g., "most jurisdictions implement traffic management plans to alleviate roadway congestion during construction," p. 26), constitutes appropriate mitigation for freeway construction impacts.

It is not unreasonable to assume that for a period of 4.5 years, major construction-related bottlenecks and travel delays will be created along segments of the I-405 Freeway where construction activities are evident and where additional enforcement activities are occurring (e.g., "A highly visible CHP presence would alert motorists that road work is being performed and that motorist behavior is under surveillance," RCS, p. 23; Draft TDM, p. 13). Since the Lead

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Agency purports that one of the stated purposes of the proposed action is to "reduce congestion," the creation of both short-term and long-term conditions leading or contributing to bottlenecks cannot be ignored. Similarly, although the three build alternatives are "expected to reduce the level of cut-through traffic within adjacent jurisdictions for motorists seeking alternative travel routes" (p. 3.1.1-21), absent from the DEIR/S' analysis is the potential for and consequences of "cut-through traffic" during the facility's lengthy construction period.

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The analysis of only a single freeway segment without the inclusion of other adjoining segments and the continuity resulting therefrom will produce unaccounted for bottlenecks during both peak periods. To the extent that Caltrans has plans to eliminate those bottlenecks with subsequent or concurrent widening plans (e.g., "Opportunities to improve the operation of 'intentional' bottlenecks can have the effect of boosting physical capacity," LSP, p. 2-1), those plans and the elimination of those bottlenecks thus become cumulative, connected, related, or similar projects that must be addressed in the DEIR/S. As now presented, the proposed project will create new bottlenecks which are never disclosed, the elimination of which are dependent upon connecting freeway improvements which themselves are ignored by the Lead Agency.

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5.5 Improper Delegation of Authority

Under CEQA, as stipulated in Friends of La Vina v. County of Los Angeles (1991), the court stated that "CEQA [shall] 'be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language' [Citation]. Implicit in the requirement that the agency exercise independent review, analysis, and judgment when using EIR materials submitted by an applicant's consultant is a heavy demand for independence, objectivity, and thoroughness. Moreover, this standard pursues the prescription that an EIR be 'a document of accountability' [Citation]." "The lead agency must independently participate, review, analyze and discuss the alternatives in good faith" (Kings County Farm Bureau v. City of Hanford [1990]). "So significant is the role of lead agency that CEQA proscribes delegation" (Planning and Conservation League v. Department of Water Resources [2000]).

In addition, NEPA requires that the federal agency verify the accuracy of information supplied by an applicant (40 C.F.R. 1506.5[a]) and respond to substantive issues raised in comments (40 C.F.R. 1503.4[a]). Although the record is clear as to the role played by the OCTA (e.g., project sponsor), absent from the DEIR/S is any evidence of the Department's role in the formulation of project alternatives or the independent validation of information and assumptions presented in the DEIR/S. The record suggests that OCTA independently formulated the identified alternatives, independently rejected other potential build and no build options, performed the environmental analysis, drafted the proposed "measures," and that Caltrans merely rubber-stamped OCTA's documentation and cost estimates (as prepared by or on behalf of the OCTA).

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As reported in "Suggested Procedures for Evaluating the Effectiveness of Freeway HOV Facilities": "It is important to ensure that the results of the evaluation are not biased intentionally or unintentionally. Thus, it is suggested that evaluations be conducted by neutral, unbiased, third parties. While it is critical that the sponsoring agencies, both transit and highway, are actively involved in conducting the study, there is much to be gained by maintaining an outside perspective during the evaluation" (p. 8).

As specified under Section 21100 of CEQA: "All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any

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project which they proposed to carry out or approve that may have a significant effect on the environment" (emphasis added).

As indicated on the OCTA's "List of Existing Awarded Federally Funded Contracts" (May 31, 2012), "Parsons Transportation Group" (Parsons) (previously Parsons Brinckerhoff Quade and Douglas, Inc.) and its subcontractors (i.e., Albert Grover & Associates; Group Delta Consultants; McLean & Schultz; Nossaman, Guther, Knox and Elliott; Paragon Partners; Psomas; Stantec; TEC Management; URS Corporation; and Value Management Strategies) are working directly under contract to the OCTA (Contract No. C80693) rather than under contract to the Lead Agency. As described by the OCTA, the contract includes "[p]roject report and environmental document preparation consultant services for I-405 widening" in the amount of "$13,584,174."

It is not disclosed whether any of those same entities also have contracts or other business relationships with the USDOT, FHWA, and/or Caltrans and what provisions might exist in those federal contracts with regards to dual relationships with both a project sponsor (if different from the NEPA lead agency) and permitting agencies.

As indicated in Title 23, "[a]ny of the lead agencies may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures and with 40 CFR 1506.5(c)" (23 C.F.R. 771.123[d]). However, if Caltrans were to select Parsons, an established vendor of the "project sponsor" and "applicant" to prepare environmental documents for the proposed action, an inherent conflict of interest would be created potentially affecting the objectivity of the resulting analysis.

Under NEPA, "[t]he lead agencies are responsible for managing the environmental review process and the preparation of the appropriate environmental review documents" (23 C.F.R. 771.109[c][1]); "[t]he draft EIS shall be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency)" (23 C.F.R. 771.123[c]). In accordance therewith, as indicated in the NOI, "Caltrans. . .will prepare an environmental impact statement (EIS)" (p. 2). As further indicated in the NOP, "the California Department of Transportation. . .will prepare an environmental impact report [EIR] for the project" (p. 1).

In what is substantially more than mere semantics, in this case, the DEIR/S appears to have been prepared directly by the "sponsor" or, more specifically, by a contractor working directly for the OCTA. In what appears to be evidence of "the fox guarding the hen house," with regards to the proposed action, the project "sponsor" rather than the State and federal agencies responsible for environmental oversight appears to have prepared and is presently processing the documentation which: (1) establishes the yardstick against which "feasibility" is measured; (2) determines the "feasibility" of the alternatives to be considered and the "infeasibility" of the alternatives to be rejected; (3) selects from those alternatives the sponsor's "preferred alternative"; (4) identifies the impacts of the sponsor's actions on the human and natural environment; (5) determines the "significance" of those impacts; (6) self-imposes "feasible" conditions in response to those sponsor-identified impacts; and (7) determine to what extent those conditions need to be monitored or enforced.

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Since the sponsor has already declared the insufficiency of funds to construct the proposed capital improvements, it would appear unlikely that same sponsor would: (A) acknowledge the existence of "significant" environmental effects; and/or (B) divert finite funds to mitigate those impacts it elects to disclose. If monitoring or compliance activities were to be established, it is likely that the firm preparing the EIR/EIS (with the $13.6 million contract) would be the same firm

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tasked with the monitoring or compliance of its own work efforts, including those construction and operational obligations it elected to self-impose.

5.6 Unsupported Conclusory Statements

In support of the three build alternatives, the Lead Agency alleges that the "[i]ncrease in mobility and operations of the freeway and roadway network would contribute to the increase in property tax base, sale tax revenue, and property values" (CIA, Table S-1, p. S-6). No information or analysis is, however, presented in support of that statement.

As indicated in the USEPA's OBNE: "Communities are also realizing that adding new road capacity no longer generates the same economic benefits it may have at one time. Studies have indicated that new highway development, which was often viewed as necessary to economic development in the past, offers increasingly fewer economic benefits at the state and national levels. As the national road network nears completion, the benefits of additional network construction decrease drastically. New roads may offer fewer benefits on the local level, too; although they may appear to spur growth, they often simply shift economic activity away from other areas" (p. 33).

If a linkage between "mobility" and enhancements to the "property tax base, sale tax revenues, and property values" can be demonstrated, it might be further concluded that further improvements to mobility would lead to further localized economic benefits. Those alternatives presented in the MIS that offered the greatest promise for improving freeway/arterial mobility (e.g., "Alternative 8 is forecast to have the largest increase in transit ridership [9.9%]. MIS, p. 83) where, however, eliminated by the Lead Agency analysis notwithstanding any off-setting "property tax base, sale tax revenues, and property value" benefits.

As reported in the USDOT's "NHTS 2001 Highlights Report, BTS03-05" (2003), while job-accessibility weighs heavily in residential location choice and strongly influences regional traffic conditions, more trips are made for retail shopping and personal services than for getting to and from work. In 2001, 44.6 percent of trips nationwide were for "family/personal business" (which includes shopping and other activities) versus 14.8 percent for commuting to work. Most trips can, therefore, be assumed to be shorter distance and duration and not dependent upon freeway conditions.

Without any supportive evidence or documentation, the Lead Agency asserts that "[d]ecreased congestion along the I-405 corridor has the potential to allow regional motorists, as well as local residents, to reach businesses more efficiently, thereby allowing for increased visitation, faster customer turn-around and, consequently, increased revenues" (CIA, p. 6-3). As evidenced by the projected LOS "F" conditions along the designated segment, other than in the context of vehicle throughput and relative speed, the Lead Agency has not presented evidence supporting the assertion that the proposed action "decreased congestion."

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In reality, it is more likely that other factors dictate shopping decisions. Since most shopping is discretionary, motorists have the ability to alter trip times to correspond to off-peak periods, select alternative routes, or combine multiple-leg trip destinations (e.g., stopping for groceries on the way home from work). Similarly, an individual's selection of travel destination is based on factors (e.g., attraction and perceived desirability) which may not be dependent upon time or distance. If the Lead Agency seeks to premise its assertion on the project's facilitation of motorists driving to more remote shopping destinations, then: (1) the project is "travel inducing"

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and (2) additional project-induced increases in VMT (and corresponding GHG emissions) must be assumed.

To the extent that increased mobility induces destinations to move further apart from one another, that outward migration ultimately leading to higher travel times and increased incurred costs. As evidence by the historic flight from the central city to suburbia, at least in the near term, transportation infrastructure served to allow for faster speeds and larger geographic catchment (e.g., shoppers purchased homes farther from their workplace). Over the long-term, however, those perceived benefits produced sprawl (suburbanization) and laid the foundation for the congestion that the proposed action now seeks to address (e.g., "Improvement in mobility and trip reliability along the I-405 freeway and roadway network would encourage the residents to continue living in Orange County," CIA, p. 6-6).

The proposed action primarily serves to promote the perpetuation of vehicle-dependent land-use patterns rather than promoting New Urbanism-based changes to those patterns, sustainable life-style choices, transportation and land-use linkages, and expansion of non-vehicle-dependent transportation alternatives, as evidenced, in part, by the increased attraction of "transit-oriented development" (TOD).

Various transportation management studies have demonstrated that "accessibility" is the valid indices and that a focus on "mobility" results in a misguided emphasis on road building to the detriment of social interaction. As indicated in "Congestion and Accessibility: What's the Relationship?", the authors wrote:

> Congestion in U.S. metropolitan areas has increased steadily in recent years [Citation]. While nobody likes to sit in traffic, congestion levels are at best an indirect and imperfect measure of people's and firms' access to opportunities. As such, widely cited measures of the economic costs of congestion that simply tally people's time spent in traffic are conceptually problematic and perhaps misleading. Congestion measures reflect potential mobility, but do not reveal individuals' relative access to jobs and activities, or firms' relative access to suppliers and customers. A growing chorus of transportation planning researchers. . .argue that transportation planning should focus on increasing access to destinations rather than increasing mobility on transportation networks. While conceptually distinct, congestion and accessibility are related. But what is the nature of this relationship? The perception that congestion makes it harder for individuals to access opportunities is rational on its face, yet congestion also arises because an area offers attractive opportunities to large numbers of people and firms. A central tenet of urban economics is that cities form and grow because they foster such agglomeration economies, which increase productivity but also introduce negative externalities such as congestion [Citation]. Furthermore, a traveler's perceived burden of congestion is highly variable, depending on the purpose, timing, and other aspects of the trip [Citation]. As a result, the relationship between congestion and accessibility is complex and far from a simple inverse relationship (p. 1).
>
> The concept and measurement of accessibility contrasts importantly from the concept and measurement of traffic congestion in at least two ways. First, the units of analysis in accessibility measurement are typically individuals, households, firms, or places, while those for congestion are usually transportation networks, links, or vehicles. Second, by emphasizing opportunities and potential, the concept of

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accessibility is necessarily abstract, ephemeral, and, as a result, difficult to measure. Traffic congestion metrics, on the other hand, typically measure the volume and velocity of vehicles on links in networks [Citation]. While conceptually straightforward, such measures make traffic patterns the end themselves, rather than the means to economic transactions and social interactions. The result of this dichotomy may be competing and contradictory definitions of transportation functionality (pp. 2-3).

As noted in "Determining the Effectiveness of HOV Lanes": "There is not enough evidence to state whether HOV lanes increase or decrease accidents when installed on mainline freeways" (p. iii). Without collaborating evidence, the DEIR/S, however, states that "[b]uild alternatives would increase freeway capacity and freeway speeds. They are anticipated to reduce rear-end and sideswipe accidents due to stop-and-go traffic and weaving, respectively" (Table 3.1.1-1, p. 3.1.1-29). To the extent that traffic accidents relate to unforeseen or unexpected roadway conditions (e.g., bottlenecks), as may be attributable to construction activities, road closures, and diversions, the proposed action could contribute to the occurrence of roadway incidents. Similarly, if accidents can be estimated based on total miles driven, the substantial increase in VMT associated with the proposed project, a quantifiable number of accidents could be estimated.

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Based on the projected project-induced increase in VMT, it is evident that the proposed project will alter regional traffic patterns, including (as asserted by the Lead Agency) removing those vehicles from local arterials which had previously sought alternative routes to avoid the congested freeway. As noted in the AQR, "diesel engine emissions are responsible for a majority of California's estimated cancer risk attributable to air pollution" (p. 80). Without any supporting analysis, the DEIR/S concludes that: (1) "Alternative 2 would not increase the percentage of DPM [diesel particulate matter] in the fleet mix and would improve vehicle speeds in the project area. As a result, Alternative 2 diesel particulate matter emissions would likely be less than Baseline emissions" (p. 80); and (2) "Alternative 3 would not increase the percentage of trucks in the fleet mix and would improve vehicle speeds in the project area. As a result, Alternative 3 diesel particulate matter emissions would likely be less than Baseline emissions" (p. 81).

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To the extent that the Lead Agency seeks to assert a benefit from reducing congestion of local streets, it bears an obligation to examine the fleet mix of any such traffic so diverted. Even to the extent that it can be demonstrated that the "percentage of trucks" would remain unchanged, with the projected increase in freeway traffic and total VMT between 2009, 2020, and 2040, a substantially greater number of trucks will travel the I-405 Freeway corridor and a substantially greater number of truck miles will be driven.

The AQR states that only between 3 and 3.5 percent of vehicles within the corridor are trucks under 2009, 2020, and 2040 conditions (Tables 1-1, 1-2, 1-3, and 1-4, pp. 7-8). Caltrans' own RCR, however, states: "According to the publication '1997 Annual Average Daily Truck Traffic on the California State Highway System,' truck volumes on I-405 in Orange County range from approximately 7,550 to 19,680, 4.9% and 7.1% of the ADT respectively. The low occurs in the vicinity of I-5 (Segment 1) and the high in the vicinity of SR-22 (Segment 5)" (pp. 14-15; see also MIS, p. 15). As further indicated in the MIS: "The current truck and total volumes on I-405 are shown in Table 4.5-2 and 4.5-3 in the 'Corridor Mobility Problem and Purpose and Need Statement.' The truck percentages shown in those tables apply only to the general purpose lanes so the truck percentages were adjusted to reflect all traffic. They range from 4.9% to 5.7% depending upon the time of day and direction of travel" (p. 69).

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Absent from the DEIR/S is any reference to the I-710 Corridor DEIR/S. As described therein: "The California Department of Transportation (Caltrans), in cooperation with the Los Angeles County Metropolitan Transportation Authority (Metro), the Gateway Cities Council of Governments (GCCOG), the Southern California Association of Governments (SCAG), the Ports of Los Angeles (POLA) and Long Beach (POLB) (collectively known as the Ports), and the Interstate 5 Joint Powers Authority (I-5 JPA) (collectively referred to as the I-710 Funding Partners), proposes to improve Interstate 710 (I-710, also known as the Long Beach Freeway) in Los Angeles County between Ocean Blvd. and State Route 60 (SR-60). The proposed project is referred to as the I-710 Corridor Project. I-710 is a major north-south interstate freeway connecting the city of Long Beach to central Los Angeles. Within the I-710 Corridor Project Study Area (Study Area), the I-710 serves as the principal transportation connection for goods movement between POLA and POLB, located at the southern terminus of I-710 and the Burlington Northern Santa Fe (BNSF)/Union Pacific (UP) Railroad rail yards in the cities of Commerce and Vernon" (p. ES-1).

The I-710 (Long Beach) Freeway interconnects with the I-405 north of the Los Angeles/Orange County line. Because the I-710 Corridor Project constitutes a concurrent activity being undertaken by Caltrans, it is both a related project producing cumulative impacts and its accompanying CEQA/NEPA analysis provides a source of relevant information germane to the assessment of the proposed action. One of the alternatives examined therein included a "tolled freight corridor" (e.g., "Although tolling trucks in the freight corridor could be done under either Alternative 6A or 6B, for analytical purposes, tolling has only been evaluated for Alternative 6B, as this alternative provides for higher freight corridor capacity than Alternative 6A due to the automated guidance feature of Alternative 6B", p. ES-11; "Tolls would be collected to help fund the construction and operation of the project. Trucks using the freight corridor would pay a toll in exchange for the travel time savings and trip time reliability offered by the freight corridor as compared to the adjacent general purpose lanes or alternative routes," p. 2-25).

Because various technical studies upon which the information presented in the I-710 Corridor DEIR/S is derived is not readily accessible (e.g., not available on the Caltrans' website), specific information on truck volumes could not be discerned from that document. As indicated in the "I-710 Corridor Project Traffic Operations Analysis Report, Final Report" (URS, January 2012) (TOAR): (1) "heavy duty trucks make up over thirty percent of the traffic stream during the day, as opposed to an average daily truck percentage of 6 to 13 percent on comparable freeways within Los Angeles County" (p. 2-1); (2) "High volumes of both trucks and cars have led to existing traffic congestion throughout most of the day (6:00 a.m. to 7:00 p.m.) on I-710 as well as on the connecting freeways. This is projected to worsen over the next 25 years" (emphasis added) (p. 3-1); and (3) for southbound I-405 Freeway, under the "no build" alternative, "[a]ll basic freeway segments (4 out of 4) are expected to operate at a poor LOS E or F during the evening peak hour" (p. 8-3). Although the amount of truck traffic likely to divert from the I-710 Freeway onto the I-405 Freeway is never disclosed, as indicated in Table 15 (I-710 Freeway Corridor Average Daily Traffic Volumes), an inordinately high volume of truck traffic is anticipated along the I-710 Freeway. At a very minimum, by 2035, the projected increase in truck volumes along the I-405 Freeway would be comparable to the increase anticipated along the I-710 Freeway under the "No Build" scenario (i.e., 32.7 percent).

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Because the "I-405 is considered a bypass route to the Interstate 5 (I-5) Santa Ana/Golden State Freeway through Orange County (NSR, p. 1), information from the I-5 FEIR/S has potential relevancy to the proposed action. As indicated therein: "The I-5 Corridor is a major local and regional truck route. The percent of trucks currently served by I-5 ranges from 8.1 to

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20 percent, with the highest truck traffic levels occurring within the segment between SR 91 and Beach Boulevard. Midday peak hour truck percentages are typically higher than AM and PM peak hours, and can reach as high as 20 percent or more of the ADT" (p. 15).

Table 15
I-710 Freeway Corridor Average Daily Traffic Volumes

I-710 Segment		Existing (2008)		2035 No Build									
				No Build		Alternative 5A		Alternative 6A		Alternative 6B		Alternative 6C	
From	To	Total	Trucks	Total	Trucks	Total	Trucks	Total	Trucks	Total	Trucks	Total	Trucks
Del Amo	I-405	179,600	42,000	227,600	74,300	288,000	80,600	317,400	93,400	317,400	93,400	317,400	93,400
I-405	Wardlow Road	179,800	41,600	227,500	74,400	291,000	80,900	314,100	89,500	314,100	89,500	314,100	89,500
Percent Trucks		-	23.2	-	32.7	-	27.8	-	28.5	-	28.5		28.5

Source: California Department of Transportation and Los Angeles County Metropolitan Transportation Authority, Draft Environmental Impact Report/Environmental Impact Statement and Section 4(f) Evaluation - I-710 Corridor Project, Los Angeles County, California, District 07-LA-710-PM 4.9/24.9, EA 249900" (California Department of Transportation and Los Angeles County Metropolitan Transportation Authority, June 2012, Tables 3.13-7 and 3-13-8, p. 3.13-21 and 22.

Caltrans' "2010 Annual Average Daily Truck Traffic on the California State Highway System" (undated), which is potentially the source for the Lead Agency's assumptions, notes that, in Orange County, the "trucks percentage of total vehicles" is 4.45 percent at Mile Post (MP) 24.044 (Seal Beach, Jct. Rte. 605)" (p. 367). As indicated in Caltrans' "2009 Annual Average Daily Truck Traffic on the California State Highway System" (December 2010), comparing 2009 and 2010 truck volumes, the percentage of truck traffic at that same MP is 4.29 percent (p. 358), indicating a significant upward trend (3.6 percent/year) in truck traffic which is unaddressed in the DEIR/S. In fact, there does not seem any viable realistic scenario in which truck volumes would remain unchanged over a 31-year period (i.e., 2009-2040).

As a result, it would appear that the assumptions presented in the DEIR/S are not supportable by substantial evidence and have been selected to support a predetermined outcome rather than to foster informed decisionmaking. In addition, that material misrepresentation not only serves to substantially underestimate potential environmental impacts but reduces the range of alternatives available for considerations (e.g., dedicated truck lane). **181**

As indicated in the FHWA's "Integrating Freight into NEPA Analysis" (September 2010), the USDOT states that the "FHWA has adopted the policy of managing the NEPA project development and decision-making process as an "umbrella," under which all applicable environmental laws, executive orders, and regulations are considered and addressed prior to the final project decision and document approval. Freight considerations are a vital component in this process. Conclusion of the NEPA process results in a decision that addresses multiple concerns and requirements, including freight. The FHWA NEPA process enables transportation officials to make project decisions that balance engineering, freight, and transportation needs with social, economic, and natural environmental factors" (p. 26). Despite that policy, freight movement does not appear to have been addressed by the Lead Agency.

If freight-hauling vehicles can increase vehicle speeds and reduce travel time by paying a toll, particularly if carrying perishable cargo and/or time-critical items, why would freight-haulers not elect to utilize HOT lanes over GP lanes (e.g., "Alternative 3 would not increase the percentage

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of trucks in the fleet mix and would improve vehicle speeds in the project area," DEIR/S, p. 3.2.6-51)? If the adage "time is money" bears some applicability to commercial vehicles and, as acknowledged, the I-405 Freeway is a "bypass" to the I-5 Freeway, why would some truck traffic now utilizing (or projected to utilize) the I-5 Freeway not divert to the I-405 Freeway HOT lanes? How could increased truck traffic on the "express lanes" impact travel speeds? **182**

As indicated in the TOAR: "Auto vehicle types are classified by occupancy: drive alone (DA), shared ride with one person (SR2), and shared ride with 2 or more passengers (SR3). Heavy duty trucks are classified as light-heavy, medium-heavy, and heavy-heavy trucks. Light-heavy trucks are 8,500 to 14,000 gross vehicle weight in pounds (GVW), medium-heavy trucks are 14,000 to 33,000 GVW, and heavy-heavy trucks are 33,000 GVW or more. . . these vehicles are reported as trucks with 5 or more axles, trucks with 4 axles, trucks with 3 axles and truck with 2 axles" (p. 4-7). Since trucks are larger than automobiles, a "passenger car equivalent" (PCE) factors is typically applied to trucks. In calculating HOT/HOV/GP-lane capacity, what PCE has been applied for light-heavy, medium-heavy, and heavy-heavy trucks? What percentage of each truck type now exists within the project area and what percentage is anticipated in the future? Is that mix consistent with the mix anticipated along the I-710 Corridor and, if not, why not? Are truck emissions the same as those associated with automobiles? How would increased truck volumes effect emission projections? What is diesel particulate matter (diesel PM) and what are the potential health risks associated with long-term exposure? **183** **184** **185**

The Traffic Study alleges that "[t]he Express Lanes would encourage carpooling by providing discounted tolls for HOVs with 3 or more occupants" (p. 1-12). No evidence is, however, presented to support that claim. Similarly, no information or analysis is presented addressing HOV+2 and HOV+3 and the impacts of congestion pricing on carpool formation. **186**

5.7 Secondary Impacts

The EIS must identify all the indirect effects that are known and make a good faith effort to explain the effects that are not known but are "reasonably foreseeable" (23 C.F.R. 1508.8[b]). As defined in Section 1508.8 of the CEQ Regulations, "'effects' include: (a) Direct effects, which are caused by the action and occur at the same time and place. (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems."

Similarly, as defined in Section 15358 of the State CEQA Guidelines: "Effects include: (1) Direct or primary effects which are caused by the project and occur at the same time and place. (2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems." As specified in Section 21061 of CEQA, an EIR intended to serve as an "informational document."

As indicated in SCAG's 2012 RTP/SCS: "Transportation projects including new and expanded infrastructure are necessary to improve travel time and can enhance quality of life for those traveling throughout the region. However, these projects also have the potential to induce population growth in certain areas of the region" (p. 80). "SCAG's analysis also indicates that

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every 10 percent decrease in congestion is associated with an employment increase of approximately 132,000 jobs. Congestion relief will be a major contributing factor to our future employment growth" (p. 16).

Although no methodology is presented, the Lead Agency asserts that implementation of Alternative 1 will "result in approximately 32,000 direct/indirect/induced jobs," Alternative 2 will result in "approximately 34,000 direct/indirect/induced jobs," and Alternative 3 will result in "approximately 42,000 direct/indirect/induced jobs" (CIA, p. .6-2). Rather than demonstrating how those estimates were derived, the Lead Agency presents a link to a FHWA website were, it must be assumed, a methodology can be found (requiring stakeholders to independently calculate the number of jobs attributable to each alternative without guidance concerning how those estimates were derived). Since no publication is cited, readers lacking computer access would be prevented from reviewing the Lead Agency's analytical assumptions and challenging or validating the document's conclusions.

As evidenced by these excerpts, the Lead Agency acknowledges that the three build alternatives will produce measureable "direct/indirect/induced" impacts. As further evidence of the DEIR/S' internal inconsistency, the Department concludes that "the proposed project does not have the potential to change land uses or induce growth but instead would provide increased lane capacity along I-405" (emphasis added) (p. 3.1.2-10) and "[t]he build alternatives are not anticipated to induce any other changes in land use and zoning in the project study area" (emphasis added) (p. 3.3.1-33); thus, seeking to avoid any analysis of the indirect and secondary consequences of the 32,000 to 42,000 "direct/indirect/induced jobs" that the Lead Agency purports that the proposed action will generate.

As indicated on FHWA's website (Employment Impacts of Highway Infrastructure Investment), the current economic environment "will exert downward pressure on the highway construction employment relative to the 2007 estimate of 27,800 jobs per $1 billion of Federal-Aid highway capital expenditure. . .The employment impacts of highway infrastructure investment do not remain constant over time. Increases in construction materials prices and wages over time will tend to reduce the number of jobs supported by each $1 billion invested."

Since the Lead Agency asserts that the proposed action is consistent with the 2008 RTP, as reported in SCAG's "The New Economy and Jobs/Housing Balance in Southern California" (April 2001): "The current (1997) regional average ratio of jobs to households is 1.25 jobs per household" (p. 15). Based on that ratio, the proposed action would result in 25,600 to 33,600 "direct/indirect/induced" housing units. The induced impact of not even a single housing unit is, however, examined in the DEIR/S. The Lead Agency's failure to examine the secondary or growth-inducing aspects of the proposed action is further highlighted by the declaration that "[t]he proposed improvements would add additional capacity to the freeway system and reduce commute times. Reduced commute times may facilitate land use planning. especially as it relates to new residential and commercial land uses because residents and shoppers may be attracted to those locations due to increased mobility. This may have a secondary effect of generating economic activity" (emphasis added) (DEIR/S, Table 3.1.1-1, p. 3.1.1-29). Although the DEIR/S acknowledges the project's potential to produce a "secondary effect," that impact is never addressed. **187**

With regards to planned street and overcrossing closures and traffic diversions and detours, the Lead Agency notes that "[a]lternative routes and detours will be used to give motorists the opportunity to avoid the work zone by diverting to other highway[s] or adjacent surface streets"

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(emphasis added) (RCS, p. 24). With regards to ramp closure, at the Fairview Road Northbound Off-Ramp, "24,000 AADT [annual average daily trips]" (RCS, p. 9) will be diverted onto other local streets for up to 30 days. The potential impacts of dumping 24,000 AADT onto other local streets and the potential level of service (LOS) and volume/capacity (V/C) impacts that would likely result from that added daily and peak-hour traffic are not, however, addressed (e.g., "Supplemental traffic analysis along alternate and detour routes may need to be performed during the final design phase to evaluate roadway and intersection performance and mitigation measures in response to added traffic," RCS, p. 24). For example, based on the proposed diversion of traffic to the Fairview Road/South Coast Drive intersection (see "Alternative Route Map – Sheet 2" and "Sheet 4" in the RCS), unaddressed is how that intersection will be impacted (e.g., southbound traffic redirected to require left turns onto Fairview Road rather than right turns). **188**

Similarly, because some motorists will inevitably seek to avoid the construction delays along the I-405 Freeway (lasting up to 4.5 years), some drivers will voluntarily divert to "other highway or adjacent surface streets." Since the "I-405 is considered a bypass route to the Interstate 5 (I-5) Santa Ana/Golden State Freeway through Orange County" (NSR, p. 1), it can be concluded that during the construction period, some of the vehicles that would otherwise travel along the I-405 Freeway will select the I-5 Freeway as an alternative travel route. Absent from the DEIR/S is any effort to identify those alternative routes, quantify the number of vehicle, or analyze the potential short-term and long-term impacts of that added traffic to those "other highways and adjacent surface streets." **189**

As indicated in the State CEQA Guidelines: "Effects analyzed under CEQA must be related to a physical change" (14 CCR 15358[b]). The Lead Agency recognizes that, as a result of the increased traffic resulting from traffic diversion and detours, physical modifications and/or other affirmative actions may be required in response thereto. The Department notes that "[p]otential mitigations that could be made on alternate and detour routes include: [1] Street/intersection improvements (widening, pavement rehabilitation, removal of median, restriping, etc.) to provide added capacity to handle detour traffic; [2] Signal improvements, adjustment of signal timing and/or signal coordination to increase vehicle throughput, improve traffic flow and optimize intersection capacity; [3] Turn restrictions at intersections and roadways necessary to reduce congestion and improve safety; [4] Parking restrictions on alternate and detour routes during work hours to increase capacity, reduce traffic conflicts and improve access" (RCS, p. 24). Nowhere in the DEIR/S are the environmental effects of those anticipated physical changes examined. **190**

5.8 Lack of Measurable Analytical Criteria

With regards to construction-term impacts, as indicated in the DEIR/S: (1) "Based on the short-term and temporary nature of the closures (10 to 30 days), the increased travel times and distances would not result in either a substantial economic effect on businesses or substantial delays or travels cost for residents or business patrons" (emphasis added) (CIA, p. 6-7); (2) "Detour routes represent a short term inconvenience to both the traveling public but do not represent a substantial burden to either businesses (limited access) or the traveling public (substantially longer or indirect travel)" (RCS, p. 18); and (3) "No temporary long-term closures have been identified that would result in any substantial effect on emergency access or response times" (RCS, p. 20). A "temporary long-term closure" would appear to be an oxymoron.

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In contrast, the Lead Agency also states that construction activities "would necessitate the closures of various facilities, such as the I-405 mainline, branch connectors, interchange ramps, and local arterials. Closures of these facilities may be overnight, short-term, during an extended weekend, or long-term. . Long-term closure of arterial overcrossings may be employed during construction to expedite construction and shorten the duration that the overcrossing is out of service" (emphasis added) (DEIR/S, p. 2-26). Additionally, the RCS identifies a number of freeway ramps which will be closed for "up to 30 days" (Table 1, pp. 4 thru 6) (e.g., "These ramps will require complete closure for a period up to 30 days during ramp reconstruction because the new ramp alignments will occupy the current ramp locations, and construction access and right-of-way requirements preclude use while under construction," p. 6).

In reality, for each of the three build alternatives, it is the Lead Agency intent that "[l]ong-term closure of arterial overcrossing[s] lasting up to 12 months may be employed during construction to expedite construction and shorten the duration that the overcrossing is out of service. The potential locations for temporary long-term closures include the following: [1] Ward Street OC - 8 to 12 months; [2] Talbert Avenue OC - 8 to 12 months; [3] Slater Avenue OC - 8 to 12 months; [4] Bushard Street OC - 8 to 12 months; [5] Newland Street OC - 8 to 12 months; [6] Edinger Avenue OC - 8 to 12 months; [7] McFadden Avenue OC - 8 to 12 months; [8] Edwards Street OC - 8 to 12 month" (DEIR/S, Table 2-1, p. 2-35). Since no prohibitions have been identified, it is conceivable that other overcrossings may also be closed for extended periods. No plans are presented in the RCS or elsewhere in the DEIR/S addressing planned detours or anticipated impacts attributable to these long-term closures and no analysis is presented concerning how such closures could affect residents and businesses, rather the Lead Agency merely states that "[c]onstruction of the proposed project would result in some temporary and intermittent inconvenience for some current land use operations due to temporary traffic lane and ramp closures and temporary construction easements" (p. 3.1.1-32). **191**

There are sufficient inferences in the DEIR/S to suggest that the potential for additional street closures is substantially greater than now indicated by the Department. For example, the Lead Agency anticipates "[c]losure of secondary streets during construction to allow quick construction and reopening" (RCS, p. 23). Those "secondary streets," however, are never identified. With specific focus on the College Park East neighborhood in Seal Beach, how would residents and motorists traveling along Almond Avenue be "inconvenienced" and what is the "temporary and intermittent" nature and extent of that "inconvenience"? **192**

Absent both some definition of "substantial economic effect" and the identification of affected uses, the Department lacks any objective basis to ascertain the nature of potential effects on affected properties. For example, a large chain-store may be able to weather a restriction on access or a reduction in drive-past customers to a greater degree than either a single mom-and-pop or drive-through establishment dependent upon daily proceeds and drive-by customers (e.g., "Alternate routes and detours will be used to give motorists the opportunity to avoid the work zone by diverting to other highway or adjacent surface streets," RCS, p. 24). To the extent that the Lead Agency asserts that certain businesses may benefit from traffic diversions (e.g., "it should be noted that during the temporary long-term closures for the Magnolia Street SB off-ramp and the Westminster Ave SB on-ramp, the Bella Terra and Westminster Malls could experience increased economic activity due to the detour related drive-by traffic," RCS, p. 20), then the converse must also be true (i.e., some businesses could experience temporary or permanent loss of customers and decreased economic activities due to traffic diversions). Other than unsupported conclusions, no analysis of adverse economic impacts has been presented. **193** **194**

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From "Alternative Route Map – Sheet 1" through "Sheet 9" in the TDM, it can be surmised that the long-term closure of identified arterials will, at least for the term of the closures, substantially reduce traffic volumes on those arterial segments between the nearest paralleling arterial and the point of closure. In addition, assuming that the intervening segments of those arterials remain open for access to those properties abutting those roadways (and located between the paralleling arterial and point of closure), there may be conditions where raised medians prevent motorists from exiting residents and/or commercial establishments, making U-turns, and returning in the opposition travel direction to those paralleling arterials. No discussion of those potential conditions has been presented in the DEIR/S, rather the Department merely states that "[a]ccess during construction would be maintained but may require reconfiguration during construction" (p. 3.1.1-32). **195**

With regards to anticipated long-term arterial closures, as indicated in the TDM: "Although impacts to local commuters, residents and local businesses would be more severe during the closure, the impacts would end sooner because the improvements would be completed quicker allowing the roadway to re-open to public faster" (emphasis added) (p. 10). No definition of "severity" is, however, provided. The terms "sooner," "quicker," and "faster" neither allow for any assessment of the "severity" of the resulting impact nor allow for a determination of the potential significance of that effect. **196**

From the above excerpt, the Lead Agency appears to equate the severity of potential impacts to the length of time the impact exists. There exists nothing in either CEQA or NEPA that includes time variability with regards to the assessment of the level of significance of an identified impact. Under the Lead Agency's rationale, there exists some unspecified universality with regards to the date/time/duration below which an impact is less-than-significant and above which that same impact becomes significant. To the extent that the Lead Agency seeks to establish duration as a component to impact assessment, with regards to each such determination, additional documentation supporting that position needs to be presented.

Although "Caltrans is the Lead Agency for the proposed project and has full discretion to establish the criteria for determining significance under CEQA" (AQR, p. 54), that criteria needs to be explicitly identified so that stakeholders can judge where the bar is being set. **197**

For example, with regards to air quality, the DEIR/S' analysis (Section 3.2.6) fails to include a discussion of the South Coast Air Quality Management District's (SCAQMD) CEQA daily threshold values for the construction or operation of a proposed project. In addition, the analysis fails to use these threshold values in determining potentially significant air quality impacts. As an example, the SCAQMD daily threshold for oxides of nitrogen (NOx) during construction is 100 pounds per day. The analysis shows that construction activities would result in as much as 106 pounds per day (Table 3.2.6-8, p. 3.2.6-29); however, those emissions are never compares to the SCAQMD threshold. Since no threshold standard is present, the DEIR/S does not consider the resulting construction-term impact to be significant and no mitigation is proposed. In Orange County, SCAQMD's threshold standards are routinely used by those local agencies traversed by the I-405 Freeway in fulfillment of their CEQA compliance obligations. **198**

5.9 Deferred Analysis and Mitigation

Under NEPA, the EIS must ensure that environmental information is available to the project's decision makers and to the public "before decisions are made and before actions are taken" (40 C.F.R. 1500.1[b]). It is critical that "[i]mportant environmental consequences will not be

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'overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.' In short, NEPA requires that the evaluation of a project's environmental consequences take place early in the project's planning process" (North Buckhead Civic Association v. Skinner [1990]).

Under CEQA, the Lead Agency is precluded from deferring the preparation of a reasonable analysis of project-related and cumulative environmental effects to later stages in the development process. This deferral of environmental assessment until after project approval violates CEQA's policy that impacts be identified before project momentum reduces or eliminates the agency's flexibility to subsequently change its course of action. More importantly, a deferred analysis and a deferred assessment of mitigation measures fails to provide evidence that the direct, indirect, and cumulative impacts of the proposed action can and have been effectively mitigated either to below a level of significance or to the maximum extent feasible. **199**

With regards to mitigation, in Communities for a Better Environment v. City of Richmond (2010), the court ruled that "[f]ormulation of mitigation measures should not be deferred until some future time" ([Citation]). An EIR is inadequate if '[t]he success or failure of mitigation efforts may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR' ([Citation]). 'A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. . .Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment ([Citation]). . .Fundamentally, the development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval; but rather, an open process that also involves other interested agencies and the public."

Cited below are a number of examples of deferred analysis.

- **Emergency response time impacts**. As indicated in the TDM: "Full freeway lane, ramp and arterial street closures would also be required during night times and on weekends (55-hour closure) during various roadway and structure construction activities. Complete ramp closure up to 30 days is also necessary for some of the interchange ramps and prolonged closure ranging from 3 to 12 months is anticipated to facilitate construction of certain arterials and overcrossing structures" (p. 8).

  As indicated in the FHWA's "Advanced Metropolitan Planning and Operations – An Objective-Driven Performance-Based Approach, A Guidebook" (February 2010): "'With homeland security concerns as well as natural disasters, efficient emergency response and evacuations are critical, and rely upon effective coordination and communication between transportation agencies and law enforcement" (p. 1-1). Rather than initiating that coordination early in the planning and environmental review process, the Lead Agency seeks to relegate "homeland security concerns" to an unspecified later date (e.g., "coordination with local jurisdictions and emergency service providers will be required during the final design," RCS, p. 20).

  The Department alleges that "[n]o temporary long-term closures have been identified that would result in any substantial effect on emergency access or response times" (RCS, p. 20); however, as a goal toward which it strives, Caltrans hopes to "[l]imit delay

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to less than 30 minutes above normal recurring traffic delay on existing facilities" (TDM, p. 8). It is unclear whether emergency service providers were made aware of either the planned "long-term closure of arterial overcrossings lasting up to 12 months" (DEIR/S, Table 2-1, p. 2-35) or the potential for 30-minute traffic delays. Since no response time analysis has been presented in the DEIR/S, it is not possible to determine how and to what extent those closures will impact emergency response. Contrary to CEQA, it appears that the Lead Agency has sought to defer that analysis until a later date, following the completion of the environmental compliance process. **200**

Planned "[l]ong-term closure of arterial overcrossing[s] lasting up to 12 months" include "Talbert Avenue" (DEIR/S, Table 2-1, p. 2-35). The Department notes that "Orange Coast Memorial Medical Center: 9920 Talbert Avenue, Fountain Valley, CA 92708" (RCS, p. 20) is one of four hospitals located within the study area. Although the Talbert Avenue overcrossing may be closed for one year, absent either any supporting analysis or coordination with emergency service providers, the DEIR/S concludes that "[n]o temporary long-term closures have been identified that would result in any substantial effect on access to or response times to/from these hospitals" (Ibid.). **201**

- **Unspecified arterial street improvements**. During freeway, individual ramps, select overcrossings, specified arterials, and unspecified secondary street closure activities, at least in certain instances, the Department has identified alternative routes and detours designed to route motorists around construction zones. With the exception of freeway ramps, the number of vehicles (as measured in annual average daily trips [AADTs]) has not been specified. However, in at least one case (i.e., Fairview Road Northbound Off-Ramp), during such closures, "24,000 AADT" (RCS, p. 9) will need to be ushered along existing roadways already operating at undesirable LOS conditions (e.g., LOS "D" or worse). Rather than analyzing the impacts of those planned diversions on both arterials and secondary streets, the Department seeks to defer that analysis to after the environmental process has been completed. As indicated in the DEIR/S: "Supplemental traffic analysis along alternate and detour routes may need to be performed during the final design phase to evaluate roadway and intersection performance and mitigation measures in response to added traffic. Potential mitigations that could be made on alternate and detour routes include: [1] Street/intersection improvements (widening, pavement rehabilitation, removal of median, restriping, etc.) to provide added capacity to handle detour traffic; [2] Signal improvements, adjustment of signal timing and/or signal coordination to increase vehicle throughput, improve traffic flow and optimize intersection capacity; [3] Turn restrictions at intersections and roadways necessary to reduce congestion and improve safety; [4] Parking restrictions on alternate and detour routes during work hours to increase capacity, reduce traffic conflicts and improve access" (emphasis added) (RCS, p. 24). **202**

  Under CEQA, words like "should" indicate guidance and words like "could" or "may" indicate a permissive element which is left to the agency's discretion (14 CCR 15005[b]-[c]) and do not constitute enforceable requirements. As such, there exist no assurances that any of the statements whose action words include "could," "should" or "may" will actually be performed and, if implemented, will produce their intended results.

  As defined, in part, in the State CEQA Guidelines, "'[p]roject' means the whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment"

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(14 CCR 15378[a]). The State CEQA Guidelines further specify that "[i]f a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measures shall be discussed but in less detail than the significant effects of the project as proposed" (14 CCR 15126.4[a][1][D]). The above excerpt states that "potential mitigation" may include unspecified street/intersection improvements, signal improvements, turn restrictions, and/or parking restrictions. These improvements (whether identified as project facilities or mitigation measures) constitute "physical changes" attributable to the proposed action and are subject to CEQA. Instead of including an analysis of those physical changes in the DEIR/S, the Lead Agency has sought to defer both their identification and investigation to an unspecified later date.

It is assumed that the "final design stage" occurs immediately prior to the commencement of construction, at a time when stakeholders lack the ability to comment and when both further change and additional mitigation becomes impractical.

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5.10 Reliance upon Outdated Plans and Policies

It is apparent the DEIR/S has either been sitting on the shelf too long (and passed its expiration date) or the document's authors have relied upon trite and generic analyses extracted from other documents (as if one-size fits all). In either case, on too many occasions, the Lead Agency seeks to utilized out-dated and superseded documents as the basis for its conclusions. What results is an incomplete and potentially erroneous assessment of the proposed action's consistency with relevant agency plans and policies.

For example, the DEIR/S misrepresents the applicable regional transportation plan (e.g., "The 2008 RTP presents the transportation vision for the SCAG region through the year 2035 and provides a long-term investment framework for addressing the region's transportation and related challenges," emphasis added, p. 3.1.1-19). Reliance upon a now defunct 2008 document prevents the Lead Agency from presenting a defensible analysis the proposed action's consistency or inconsistency with the current regional plan. Absent from the DEIR/S is any reference to SCAG's 2012 RTP/SCS (adopted on April 4, 2012) or its corresponding 2012 RTP/SCS PEIR (certified on April 4, 2012). The 2012 RTP/SCS was adopted and the 2012 RTP/SCS PEIR was certified prior to the release of the DEIR/S; however, no discussion of those documents is presented therein. Similarly, the DEIR/S cites the OCTA's "2006 Long-Range Transportation Plan (LRTP)" (emphasis added) (pp. 3.1.1-17 and 18) (i.e., "'New Directions' is an LRTP developed by OCTA and is designed to address the County's transportation services," p. 3.1.1-17), as the basis for determining consistency with regional transportation plans; however, in 2010, the OCTA adopted "Destination 2035 – Moving Toward a Green Tomorrow," thus relegating "New Directions" to its archives.

The project's air quality analysis is based on the EMFAC2007 emissions model (e.g., "EMFAC2007 was used to calculate operational emissions, DEIR/S, p. 3.2.6-22). The EMFAC2007 model has now been updated and replaced with EMFAC2011. As a result, the air quality analysis does not reflect the current analytical methodology, thus potentially leading to inaccurate emission calculations.

Absent from the DEIR/S is any "bibliography" or "list of references" allowing stakeholders to independently review the information contained in cited studies and referenced documents. If

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included, the Lead Agency's over-reliance upon antiquated information (e.g, "2006 Long-Ranch Transportation Plan" and "2008 Regional Transportation Plan") would become readily apparent.

5.11 Lack of Clearly Defined Threshold of Significance Criteria

The primary roles of CEQA are to inform lead, responsible, and trustee agencies about the effects of their actions, to create a formal mechanism to receive public input, to explore ways to mitigate adverse effects, and to determine whether there are alternatives to the proposed action that could reduce or avoid identified effects. Under CEQA, agencies are asked to drawing a "line in the sand" beyond which any impact would be deemed to be "significant." Section 15382 of the State CEQA Guidelines defines "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change related to a physical change may be considered in determining whether the physical change is significant."

Referencing Section 21000(d) of CEQA, the Legislature declared that "[t]he capacity of the environment is limited, and it is the intent of the Legislature that the government of the State take immediate steps to identify any critical thresholds for the health and safety of the people of the State and take all coordinated actions necessary to prevent such thresholds being reached." As required under Section 21001(f) therein, it is the policy of the State to "[r]equire governmental agencies at all levels to develop standards and procedures to protect environmental quality." At a minimum, a lead agency's standards cannot impose lower thresholds than established under applicable State and federal statutes and regulations. As long as they are factually based, fairly applied, and clearly articulated, lead agencies have the authority to impose there own threshold of significance criteria. No information is presented in the DEIR/S to suggest that the Lead Agency has formulated any independent threshold of significance criteria.

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Absent from the DEIR/S is any clear description of the Lead Agency's threshold of significance criteria. Because a "CEQA checklist" is presented in Appendix A (CEQA Checklist) of the DEIR/S, by inference, it is assumed that the threshold of significance standards presented herein constitute the criteria that the Lead Agency seeks to apply to the proposed action. Beyond mere reliance upon the checklist, a number of sections of the State CEQA Guidelines are directly relevant to the assessment of an impact's significance (14 CCR 15064, 15064.4, 15064.5, 15064.7, 15065, and 15382). As stipulated therein, "[a] threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant" (14 CCR 15064.7[a]). "The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data" (14 CCR 15064[b]). Where in the DEIR are the quantitative, qualitative, and/or performance-based thresholds of significance presented?

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Although the CEQA checklist provides broad guidance, its purpose is to be used early in the environmental review process to facilitate scoping activities, not after the completion of the DEIR/S as a summation of the preliminary findings presented therein. Referencing Section 15063(d)(3) of the State CEQA Guidelines: "An Initial Study shall contain in brief form. . .An identification of environmental effects by use of a checklist, matrix, or other method, provided

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that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries."

As noted in Appendix A of the DEIR/S, the "CEQA checklist" was prepared on March 18, 2010. Both the NOP and NOI were released on August 26, 2009. As such, it is evident that the referenced checklist was not a part of any public outreach effort and, up to the release of the DEIR/S, was strictly an internal document. **207**

The insufficiency of the checklist can be demonstrated by the precise working of that document. For example, with regards to the assessment of air quality impacts, the checklist queries whether the project would "[v]iolate any air quality standard or contribute substantially to an existing or projected air quality violation" (emphasis added) (Appendix A, p. 2). In order to support any conclusion, the Lead Agency, therefore, needs to disclose the existence of "all" air quality standards. Since the standards of the local air quality management district (i.e., South Coast Air Quality Management District) have neither been presented nor cited, the Lead Agency draws (erroneous) conclusions without presenting the substantial evidence (e.g., quantitative thresholds) upon which that conclusion is based. **208**

5.12 Lack of Efficacy of Mitigation Measures

For a reader unfamiliar with the DEIR/S, Table S-1 (Project Impact Summary Table), containing the proposed "avoidance and minimization measures" and "mitigation measures," is surprisingly absent from the document's table of contents (p. vi). Similarly, with regards to each of the three building alternatives, no distinction is made therein relative to which of those "effects" and/or "measures" are applicable to which alternatives. As such, to the extent that specific actions are unique to individual alternatives, readers are required to conduct a detail review of the text of the DEIR/S in order to determine the relevancy of each "effort" and "measure."

Although represented as separate items (e.g., "Table S-1 summarizes project impacts by alternative and identifies avoidance and minimization measures. Where applicable, these measures are sometimes also mitigation measures, as discussed in Chapter 4 of this Draft EIR/EIS," p. S-12), as indicated above, it is not possible to clearly distinguish between "avoidance and minimization efforts" and "mitigation measures" and how those distinct "efforts" and/or "measures" differ in terms of their application and enforceability. Because that distinction is made intentionally obtuse, no differentiation between "avoidance and minimization measures" and "mitigation measures" can be made herein. **209**

Pursuant to Section 21081.6(b) of CEQA and Section 15126.4(a)(2) of the State CEQA Guidelines, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments." The purpose of this requirement is to "ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded" (Federation of Hillside & Canyon Associations v. City of Los Angeles [2000]). As indicated by the Governor's Office of Planning and Research's (OPR) "Tracking CEQA Mitigation Measures under AB 3180" (March 1996): "A measure that did not mitigate the impact could not be the basis for a finding that impacts were mitigated."

Although the following analysis cites specific "efforts" and/or "measures" presented in the DEIR/S without differentiation between "avoidance and minimization measures" and "mitigation measures" (as those terms are used by the Lead Agency), the issues raised should not be

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considered unique to only those "efforts" and/or "measures" so cited but should be interpreted as having relevancy or potential relevancy beyond the specific actions cited.

5.12.1 Measures which are not Mitigation

- **LU-1**. If a build alternative is selected for implementation, OCTA shall request the County of Orange and the cities along the project corridor to amend their respective General Plans to reflect the selected build alternative and the modification of land use designations for properties that would be acquired for the project that are not currently designated for transportation uses (pp. S-13 and 3.1.1-33).

  As stipulated in the State CEQA Guidelines: "'Mitigation' includes: (a) Avoiding the impact altogether by not taking a certain action or parts of an action. (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment. (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. (e) Compensating for the impact by replacing or providing substitute resources or environments" (14 CCR 15370). Under NEPA, mitigation includes avoiding an impact by not taking a certain action, or parts of an action; minimizing an impact by limiting the degree or magnitude of the action and its implementation; rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time, through preservation and maintenance operations during the life of the action; and compensating for an impact by replacing or providing substitute resources or environments (40 C.F.R. 1508.20).

  Mitigation measures must satisfy the constitutional test of "substantially advancing legitimate governmental interests." The California Supreme Court has ruled that this requirement consists of two elements. First, the courts (Nollan v. California Coastal Commission [1987]) have delineated the "essential nexus" that must exist between the legitimate public interest being protected and the mitigation which is imposed. A basis link between the imposed mitigation measures and the identified environmental effect is needed in order to satisfy this test. Second, the courts (Dolan v. City of Tigard [1994]) have stated that the imposed mitigation measure must substantially advance legitimate governmental interests and be "roughly proportional" to the project's individualized environmental effects.

  With regards to the above referenced action, the Lead Agency's strategy only includes a commitment by the OCTA to submit a "request" to each affected agency. The submittal of a "request" (whether written or oral) bears no "nexus" or "rough proportionality" (14 CCR 15041[a]) with the identified impact (e.g., loss of property and forfeiture of any right of use), offset or compensate for the environmental effect, or offer reasonable assurance that any further actions will result from the Lead Agency's actions. **210**

  No factual basis is provided supporting any asserting by the Lead Agency that this and other similar measures (e.g., COM-5, COM-7, COM-8, COM-9, COM-11, UT-1, UT-2) will serve to reduce, avoid, eliminate, rectify, or compensate for any of the environmental effect identified in the DEIR/S. **211**

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5.12.2 Measures which are not Measureable

- **LU-2**. Caltrans shall implement a TMP throughout the duration of the construction activities and make this document available to the public. The TMP shall seek to minimize project-related construction disruptions and would include traffic strategies designed in coordination with local jurisdictions (pp. S-13 and 3.1.1-33).

Words like "minimize" or "maximize" and their derivatives are meaningless because no actual performance is promised or specified and no yardsticks are presented against which each measures efficacy can be judged. For example, with regards to impacts on residents and businesses attributable to street closures and access restrictions, "LU-2" states that "Caltrans shall implement a TMP [traffic management plan] throughout the duration of the construction activities and make this document available to the public. The TMP shall seek to minimize project-related construction disruptions and would include traffic strategies designed in coordination with local jurisdictions" (emphasis added) (p. 3.1.1.33). The term "seek to minimize" is never defined, no performance standards are established against which attainment can be measures, and no remedial actions are proposed should the proposed measure fall short of its intended (but unmeasureable) results. 212

Similar language is presented in the CIA. As indicated therein: (1) "Implementation of the TMP as outlined in Section 4.6 would minimize impact to the use of community services and facilities" (emphasis added) (p. 5-20); (2) "The Draft TMP (Appendix C), describes the action plan for minimizing impacts to community facilities during construction" (emphasis added) (p. 5-21); (3) "Implementation of the TMP would minimize impacts related to circulation and access during the construction period" (emphasis added) (p. 5-27); and (4) "The Transportation Management Plan (TMP) is a specialized program designed to minimize the impacts of a construction project by applying a variety of techniques including Public Information, Motorist Information, Incident Management, Construction Strategies, Demand Management and Alternate Route Strategies" (emphasis added) (RCS, p. 21). As a result, neither the DEIR/S nor its accompanying technical studies offer further clues as to how "minimize" will be quantified, evaluated, and/or monitored. 213

In addition, although there is no indication that construction would conceivably take less than the time period specified (e.g., 54 months), the Department is "considering" the establishment of economic motivations to push the contractor into greater performance (e.g., "A supplemental construction strategy under consideration for this project is the use of an incentive/disincentive program to motivate the contractor to achieve the overall construction schedule and minimize impacts to traveling public and local communities," RCS, p. 24). As a result, the contractor may have agency-sanctioned disincentives to take any actions that could potential delay performance (e.g., facilitate private property accessibility to the detriment of movement of construction equipment). If the contractor has to choice between his paycheck and what the Department categorizes merely as a "short-term inconvenience" (RCS, p. 18) or "intermittent inconvenience" (DEIR/S, p. 3.1.1-32), the affected property owners will be the parties that suffer. 214

As indicated in Appendix D (Draft Traffic Management Plan) of the CIA, the following "TMP goals" are presented "[1] Maintain travel lanes on I-405 mainline except as allowed per approved lane closure charts; [2] Limit delay to less than 30 minutes above normal

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recurring traffic delay on existing facilities; [3] Maintain traffic flow throughout the corridor and surrounding areas; [4] Provide a safe environment to the work force and traveling public" (CIA, Appendix D, p. 7). With the single possible exception of the 30-minute delay limitation, the purported goals neither impose/stipulate any meaningful actions nor respond to the TMP's stated purpose (e.g., minimize project-related construction disruptions," p. 3.1.1.33). In light of the planned closure of the mainline freeway (e.g., "During construction, there will be numerous different closures of the freeway mainline, branch connectors, interchange ramps and local arterials required to accommodate various construction activities," TMP, p. 10), the goal to "maintain travel lanes on I-405 except as allowed [by Caltrans]" serves no apparent purpose. With the plethora of freeway mainline, ramp, overcrossing, arterial, and secondary street closures, Caltrans' proposal merely directs motorists to use other streets over which it has not jurisdiction and whose capacity (to accommodate those added vehicles) is undemonstrated. The provision of a "safe environment" is both a legal requirement and a liability risk if such an environment were not to be maintained.

Given the opportunity to avoid a 30-minute delay by selecting an alternative destination, if comparable services are available elsewhere, most motorists would seek to avoid the delay. As a result, the Lead Agency cannot demonstrate that the TMP will effectively mitigation "project-related construction disruptions" (Measure LU-2). No factual basis is provided supporting any asserting by the Lead Agency that this and other similar measures (e.g., COM-6, COM-8, COM-9, T-1, VIS-1, VIS-6, VIS-16) will serve to reduce, avoid, eliminate, rectify, or compensate for any potential environmental effect. 215

5.12.3 Measures that Constitute only Restatements of Existing Requirements

- **COM-13**: Where acquisition and relocation are unavoidable, the provisions of the Uniform Act and the 1987 Amendments, as implemented by the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs adopted by the United States Department of Transportation (March 2, 1989) and, where applicable, the California Public Park Preservation Act of 1971 will be followed. An appraisal of the affected property will be obtained, and an offer for the full appraisal will be made (pp. S-13 and 3.1.4-40).

With regards to "COM-13," there is no corresponding text reference in the DEIR/S allowing stakeholders to understand the environmental impact that this measure seeks to address. The DEIR/S does, however, note that "the property owners would be entitled to compensation to the extent provided by law in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended" (p. 3.1.4-33). Similarly, the AQR states that "[a]ll construction vehicles and equipment would be required to be equipped with the State-mandated emission control devices pursuant to State emission regulations and standard construction practices" (emphasis added) (p. 1). If "State-mandated," since it is prohibited from non-compliance, the stated measure imposes no additional obligation upon the Lead Agency other than to build the project in the manner in which it is already required by law.

Compliance with existing laws and regulations does not constitute mitigation under either CEQA or NEPA because it imposes no additional obligations upon the Lead Agency beyond those the agency is already bound. As such, this and other actions merely specifying compliance (e.g., COM-2, COM-10, WQ-1, WQ-3, WQ-4, WQ-6, GEO-1,

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GEO-2, GEO-6, HAZ-4, HAZ-5, HAZ-10, HAZ-11, AQ-1, AQ-2, AQ-11, AQ-12, NOI-2, NOI-3, BIO-2, BIO-4, BIO-5, BIO-9) cannot be cited as the factual basis for reducing the impact for these this and those related measures have been formulated.

5.12.4 Measures that do not Specify any Actual Action 216

- **COM-4**. Provision of motorist information (i.e., existing changeable message signs, portable changeable message signs, stationary groundmounted signs, traffic radio announcements, and the Caltrans Highway Information Network [CHIN]) (pp. S-14 and 3.1.4-30).

  Measures intended to reduce, avoid, or eliminate an identified environmental effect must actually include some specified action that the Lead Agency or another entity will perform. This and similar measures (e.g., COM-5, COM-6, COM-8, COM-9, T-1, VIS-1, VIS-6) are drafted in a fashion that do not obligate any party to any actual action. If there exists no action-causing behavior or other corrective actions, no factual basis exists for asserting that imposition and/or compliance will reduce any corresponding environmental impact.

5.12.5 Delegation to Non-Governmental Entities Responsibility for Mitigation 217

- **UT-2**. During construction, emergency service providers will be alerted in advance of any temporary road closures and delays so that they have adequate time to make appropriate accommodations to ensure prompt emergency response times that fulfill their responsibilities and defined service objectives (pp. S-18 and 3.1.5-18).

  As specified under CEQA: "Each public agency is responsible for complying with CEQA and these Guidelines. A public agency must meet its own responsibilities under CEQA and shall not rely on comments from other pubic agencies or private citizens as a substitute for work CEQA requires the lead agency to accomplish" (14 CCR 15020). Here, the Lead Agency's obligation is only to "alert" emergency service providers of pending construction activities and street closures. The Department is self-imposing no obligations to ensure that timely emergency response can and will be provided. It is up to private providers (not the agency creating the impediments) to "make appropriate accommodations," including any incurrence of associated added costs. Because there is no assurance that similar levels of emergency response can be provided (e.g., "Limit delay to less than 30 minutes above normal recurring traffic delay on existing facilities," TDM, p. 8) and because the term "appropriate" is left undefined, it is potentially the victim or patient that predicated the emergency response action that bears the ultimate risk and compensatory obligation. 218 219

5.12.6 Deferred Mitigation

- **VIS-14**. Design all visible concrete structures and surfaces to adhere to the Aesthetic and Landscape Master Plan when developed (pp. S-23 and 3.1.7-66; VIA, p. 1).

  Although the above "measure" is included in Chapter 3.1.7 (Visual/Aesthetics) in the DEIR/S, no reference to or discussion of the "Aesthetic and Landscape Master Plan" is presented in Chapter 2 (Project Alternatives) or in Chapter 3.1.7 (Visual/Aesthetics). Only an indirect reference is provided in the VIA (i.e., "In addition, the aesthetics and 220

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appearance of the measures will need to use the corridor master plan as a guiding document," emphasis added, p. 115). As a result, unless intentionally withheld, it appears that the "Aesthetic and Landscape Master Plan" and "corridor master plan" constitute project-related documents which do not yet exist but will be developed at an unspecified later date.

In addition, measures that stipulate performance "prior to completion of the final EIR/S" (e.g., HAZ-1, HAZ-3, HAZ-4, HAZ-5, HAZ-7, HAZ-8) only serve to: (1) impede informed decisionmaking by denying decision makers the opportunity to consider those plans and/or analyses in the context of additional information only obtainable through peer review; and (2) limit the affected public's opportunity to review, consider, and submit comments relating to the merits of those plans and the adequacy of those analyses.

Since they have yet to be developed, "measures" specifying compliance with non-existent documents and absence any measureable performance standards cannot be cited as demonstrating any potential off-setting environmental benefits. As such, this and other actions merely specifying compliance (e.g., VIS-5, VIS-11, HYD-4, HYD-5, WQ-2, WQ-6, PAL-1, AQ-7, BIO-2) cannot be cited as the factual basis for reducing the impact for these this and those related measures have been formulated.

5.12.7 Non-Enforceable Mitigation

- **GEO-2**. Selection of earth-retaining system types should be based on consideration of foundation bearing capacity, anticipated settlement and ability of the system to tolerate settlements, overall slope stability, constructability, and cost (pp. S-27 and 3.2.3-9).

  Section 21081.6(b) of CEQA requires that mitigation measures be "fully enforceable through permit conditions, agreements, or other measures." Measures that stipulate that the Lead Agency or another party "should" or "may" do something does not actually obligate the Lead Agency or that party to do anything. If no inherent requirements are established, compliance cannot be enforced.

  This and other similar measures (e.g., GEO-3, GEO-4, GEO-6) containing only recommendations cannot be cited as the factual basis for reducing, avoiding, eliminating, rectifying, or compensating for the impact that the measure was formulated to address.

When each of the above avoidance, minimization, and mitigation measures are eliminated, some topical issues addressed in the DEIR/S have few if any measures left. Since the Lead Agency states that each of the identified measures have been integrated into the proposed action and, therefore, constitutes a part of the project description then, with the exception of the narrow consideration among the three build alternatives, nothing (in terms of actual mitigation) is actually being provided for the purpose of mitigating the potential direct, indirect, and cumulative environmental effects of the proposed action.

5.13 Non-Disclosure of Critical Information

Although the administrative record is replete with references to OCTA's intent to authorize use (for a toll payment) of the "express lanes" established under Alternative 3 by SOVs, with the exception of reference to rejected alternatives presented in the MIS, only a single reference to

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"single-occupant vehicles," "single-occupancy vehicles," and/or "SOVs" can be found therein (i.e., The Express Lane Facility would be continuously monitored. During peak periods of congestion, monitoring would be used to adjust toll amounts to ensure that all user groups [i.e., HOVs, buses, and single-occupancy vehicles] of the Express Lanes experience free-flow conditions with less congestion and more throughput per lane than the GP lanes. The Express Lanes provide an option to users to obtain increased reliability in travel time," p. 2-11). The term "SOV" is not even defined in Appendix G (Acronyms) in the DEIR/S. Because of its potentially broad reaching ramifications to not only the environmental analysis but to public perception, this lack of reference appears more than an oversight but disingenuous (e.g., an intentional withholding of critical information) and obfuscate the precise nature of the proposed action and OCTA's intent.

Numerous documents critical to an understanding of the proposed action and upon which the Lead Agency's analysis and preliminary conclusion (in the DEIR/S) appears to have been derived have not been included therein and, in some instances, their existence not acknowledged or, if acknowledged, referenced in such a way as to derive the affected public of the ability to review and consider those documents. For example, the DEIR/S table of contents identifies 18 "appendices" (p. iii); however, the following key documents are not included therein: (1) "Traffic Study – San Diego Freeway (I-405) Improvement Project SR-73 to I-605, Orange and Los Angeles Counties" (Caltrans, May 2011); (2) (2) "Community Impact Assessment – San Diego Freeway (I-405) Improvement Project SR-73 to I-605, Orange and Los Angeles Counties" (Caltrans, August 2011) (CIA); (3) "Noise Study Report – San Diego Freeway (I-405) Improvement Project SR-73 to I-605, Orange and Los Angeles Counties" (Caltrans, June 2011) (NSR); (4) "Noise Abatement Decision Report – San Diego Freeway (I-405) Improvement Project SR-73 to I-605, Orange and Los Angeles Counties" (Caltrans, September 2011) (NADR); (5) "Initial Site Assessment I-605, Orange and Los Angeles Counties" (Caltrans, March 2011) (ISA); (6) "Relocation Impact Memorandum – San Diego Freeway (I-405) Improvement Project SR-73 to I-605, Orange and Los Angeles Counties" (Caltrans, February 2011) (RIM); (7) "Air Quality Report – San Diego Freeway (I-405) Improvement Project SR-73 to I-605, Orange and Los Angeles Counties" (Caltrans, May 2011) (AQR); and (8) "Visual Impact Assessment – San Diego Freeway (I-405) Improvement Project SR-73 to I-605, Orange and Los Angeles Counties" (Caltrans, May 2011) (VIA). Much of the information presented in the DEIR/S, including its listed "appendices," appears to be based on the more thorough analyses presented in these "missing" documents. It is the City's belief that the above referenced documents were not widely disseminated and where not included in the information packets that were provided to local libraries. 221

One of the City's expressed concerns relates to the anticipated relocation of the existing soundwall in the vicinity of Almond Avenue in Seal Beach. The DEIR/S is so vague in detail, although its relocation can be deciphered through a close examination of utility drawings (differentiating between "Existing R/W" and "Proposed R/W," Appendix K, Utility U-24 and 2-25), with regards to each alternative, there is no explicit declaration of the Department's intent. Leaving its details to speculation, the Lead Agency states: "Numerous soundwalls within the corridor would be replaced to accommodate the widened paving. In some instances, retaining walls would be placed below these walls, although these retaining walls are anticipated to be less than 5 ft in height. A new wall would then be constructed on top of the retaining wall section. [1] Alternative 1: 17 new soundwalls, 6 existing soundwalls would be replaced at a greater height, 14 existing soundwalls would be replaced in-kind, and 6 soundwalls would be provided for gap closure (i.e., to account for removal of embankment). [2] Alternative 2: 15 new soundwalls, 5 existing soundwalls would be replaced at a greater height, 20 existing soundwalls

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would be replaced in-kind, and 7 soundwalls would be provided for gap closure (i.e., to account for removal of embankment). [3] Alternative 3: 16 new soundwalls, 6 existing soundwalls would be replaced at a greater height, 23 existing soundwalls would be replaced in-kind, and 7 soundwalls would be provided for gap closure (i.e., to account for removal of embankment)" (DEIR/S, p. 3.1.7-31). As a result of this lack of reasonable disclosure, City residents and businesses are unable to clearly ascertain the precise nature of the proposed improvements and formulate meaningful comments on the DEIR/S.

The DEIR/S notes that "[v]isual impacts related to utility relocations would be minor, and in some areas would improve because some utilities would be relocated within bridge structures or underground; however, relocation of utility lines would have little impact on visual quality because existing views would, for the most part, remain unchanged" (emphasis added) (p. 3.1.7-32). The terms "little impact" (in the context of a defined quantitative or qualitative threshold) and "for the most part" (in the context of those locations where visual quality is anticipated to change) are left undefined but suggest that impacts will, in fact, occur and, in some instances, the resulting changes would be considered adverse.

Unless underground at the full and complete expense of the Department, it is further the City's believe that relocation of the existing soundwall near Almond Avenue will predicate the need to relocate the existing overhead utility lines now situated between the northern edge of the existing soundwall and the southern edge of pavement along Almond Avenue. The potential relocation of those utilities is not, however, addressed in the DEIR/S. Similarly, the Department does not indicate the party or parties that would be responsible for that relocation and whether any costs would be passed along to the utility's ratepayers, would be incurred by individual property owners, or would be borne by the Lead Agency as a project-related cost. 222

In addition, evidence suggests that other information that may be critical to assessing "feasibility" and evaluating the comparative merits of project alternatives has not been included in the DEIR/S and/or is being withheld by the OCTA so as to prevent affected stakeholders from submitting comments thereupon. For example, as indicated in correspondence from William Kempton, OCTA's CEO to OCTA's Highway Committee (Subject: Report on Phase II Feasibility Study – Traffic and Revenue Analysis for the San Diego Freeway [Interstate 405] Improvement Project Between Costa Mesa Freeway [State Route 55] and San Gabriel River Freeway [Interstate 605]), dated April 18, 2011, the CEO stated that OCTA "Staff is recommending further study to look at a more thorough representation and distribution of the value of time on traffic, a more detailed representation of travel time savings than what is calculated using the OCTAM travel demand model, effects of a dynamic tolling structure, and financial mechanisms to leverage additional funding, including private funding, to advance the project" (emphasis added) (p. 3). 223

Because the DEIR/S contains no information concerning the "value of time on traffic" and/or "travel time savings," it is not possible to comment on any analysis, conclusions, or methodology used in the derivation of that information. Although the City would generally support plans to reduce the time that motorists spend in congested traffic (whether on the freeway or other arterials), available scientific information suggests that those indices do not have merit in assessing transportation investment. As indicated in the World Bank's "Beyond Travel Time Savings: An Expanded Framework for Evaluating Urban Transport Projects" (2011) (see Attachment E), Robert Cervero notes that "[i]n congested, fast-growing cities with a pent-up demand for mobility, unchecked sprawl, and correspondingly high induced-demand elasticities, 224

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travel-time savings is likely a poor measure of welfare benefits from transport interventions, policy changes, and capital investments" (p. 28).

In addition, although a detailed "Expression of Interest in Tolling Authority was submitted to FHWA [by OCTA] in July 2010" (p. 1-19), a copy of that document is neither included in the DEIR/S nor available for review on OCTA's website. It is likely that the information contained therein has substantive bearing on the public's understanding of important physical and operational characteristics of Alternative 3. Because it sets in motion certain legislative or regulatory actions, its omission only serves to reinforce public suspicions of intentional misdirection and non-disclosure, the likely presence of inconsistencies between that application and the project's environmental documentation, and possible evidence of a pre-determination concerning the Lead Agency's identification of the "preferred project." 225

Similarly, with respect to "approval for modified access report to the Interstate system," the DEIR/S states that "[t]no Draft modified access report has been submitted to FHWA for review and comment" (Table 2-2, p. 2-51). As with the "Expression of Interest," it is likely that the information contained therein has substantial bearing on the public's understanding of the proposed action. Public review (during the CEQA/NEPA process) is critical to ensure consistency between that application and the project's environmental documentation, demonstrate objectivity with regards to the manner in which the three build alternatives have been examined, and to demonstrate the absence of any predetermination. 226

5.14 Lack of Objectivity

CEQA requires that decisions be informed and balanced (14 CCR 15003[j]). The court has noted that "the ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA" (Santiago County Water District v. County of Orange, 1981) and "only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives" (City of Santee v. County of San Diego, 1989). "If a final EIR does not 'adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project,' informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law" (City of San Diego v. Board of Trustees of the California State University, 2011, quoting City of Santee v. County of San Diego).

In Sierra Club v. Froehlke (1987), the federal court noted that because "NEPA is concerned with accurate and informed decisionmaking as a general matter[, a]n environmental report that erroneously depicts positive environmental consequences poses as significant an obstacle to informed decisionmakingas one that inadequately assesses adverse circumstances."

The DEIR/S fails to meet the standard of a "balanced" assessment. For example, for the apparent purpose of promoting the proposed action, with regards to the No Build Alternative, the Lead Agency alleges that "[t]his alternative would be inconsistent with many regional and local planning goals and policies. The No Build Alternative, therefore, could result in adverse impacts related to land use" (DEIR/S, p. 3.1.1-20). Conversely, the Lead Agency fails to acknowledge that the No Build Alternative, as least to the degree that it does not promote new lane-miles over

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other transportation options and does not incentivize SOV trips, might also be consistent with other "regional and local planning goals and policies.

The DEIR/S further notes that "[d]uring construction of the build alternatives, motorists and emergency service providers can expect to experience typical construction-related temporary changes in access, with intermittent delays on I-405 and adjacent local roadways" (p. 3.1.5-13). Although no "construction-related" impacts are associated with the No Build Alternative.

The Lead Agency seeks to assert that, under the No Build Alternative, "congestion" will remain a problem but, under any of the build alternatives, "congestion" will be eliminated or substantially reduced. The DEIR/S, however, notes that none of the build alternatives "will totally alleviate congestion" (Traffic Study, p. ES-4). In what only appears to be an attempt to instill fear in readers toward a build option, the Lead Agency alleges that "[e]mergency response times may increase under the No Build Alternative due to a projected increase in future traffic volumes and a corresponding increase in traffic congestion" (p. 3.1.5-11) but, absent any supporting analysis, "any of the three build alternatives. . .could result in improved response times" (emphasis added) (Ibid.).

As indicated in Appendix A (CEQA Checklist), with regards to whether the proposed action would "[i]mpair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan" (p. 6), the Lead Agency concludes that the resulting impact is "less than significant with mitigation." Since no comparative analysis of emergency response impacts is presented in Table S-1 (Project Impact Summary Table) (p. S-18), the CEQA checklist, summary table, and corresponding DEIR/S text appear internally inconsistent.

The most glaring example of the document's lack of objectivity is the allegation that "[r]egional operational emissions would result in a beneficial impact under the build alternatives" (AQR, p. 1). Although information presented by the City refutes that conclusion, this statement is presented as if it was an uncontested fact. While required under the State CEQA Guidelines, the Lead Agency fails to identify this assertion as either an "area of controversy" or an "issue to be resolved" (14 CCR 15123[b]). 227

5.15 Evidence of Predetermination

As indicated in Section 15003 of the State CEQA Guidelines: "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." The California Supreme Court, in Laurel Heights Improvement Association v. Regents of the Univ. of California (1988), ruled that "[a] fundamental purpose of an EIR is to provide decision-makers with information they can use in deciding whether to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If post approval environmental review were allowed, EIRs would likely become nothing more than post hoc rationalizations to support action already taken. We have expressly condemned this use of EIRs " That same "post hoc rationalization" is apparent herein.

In Concerned Citizens of Costa Mesa v. 32nd District Agricultural Association (1986), the court emphasized the critical role of linking government decisionmaking with public participation. "CEQA compels an interactive process of assessment of environmental impacts and responsive project modifications which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process [Citation]. In

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short, a project must be open for public discussion and subject to agency modification during the CEQA process [Citation]. This process helps demonstrate to the public that the agency has in fact analyzed and considered the environmental implications of its action."

Under NEPA, "[a]fter publication of the Notice of Intent, the lead agencies, in cooperation with the applicant (if not a lead agency), will begin a scoping process which may take into account any planning work already accomplished, in accordance with 23 CFR 450.212 or 450.318. The scoping process will be used to identify the purpose and need, the range of alternatives and impacts, and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7" (23 C.F.R. 771.123[b]) (see also 23 C.F.R. 771.111[h][2][vii]). Alternatives considered in the NEPA process for an EIS (23 U.S.C. 139) must arise from a process where the public and agencies have an opportunity for input in the identification of the range of alternatives considered. As specified, publication of the NOI is intended to initiate a scoping process through which alternatives are identified. In addition, as indicated in "SAFETEA-LU Environmental Review Process, Final Guidance" (Public Law 109-59 [November 15, 2006]): "As early as practicable, the lead agencies must give participating agencies and the public the chance to become involved in defining the range of alternatives" (Question 37).

Although the NOI was released on August 26, 2009, the range of alternatives which were to be examined in the DEIR/S had already been determined. As indicated in correspondence from William Kempton, OCTA's CEO to OCTA's Highway Committee (Subject: Update on Project Alternatives for the San Diego Freeway [Interstate 405] Improvement Project), dated August 26, 2009, "[o]n January 26, 2009, the Orange County Transportation Authority (OCTA) Board of Directors (Board) approved staff's recommendation to consider four alternatives. Alternative 1 proposes to add one general purpose lane in each direction, and Alternative 2 proposes to add two general purpose lanes in each direction. Alternative 3, the high-occupancy toll (HOT) lanes alternative, would add one general purpose lane and one HOT lane in each direction; converting the existing high-occupancy vehicle lane to a HOT lane would result in a total of two HOT lanes in each direction of Interstate 405. From here forward, this alternative will be referred to as the Express Lanes alternative. Alternative 4 would identify improvements related to adding one general purpose lane in each direction that match the currently available funding" (p. 1). With the exclusion of Alternative 4 (designed to "match the currently available funding"), none of the alternatives have changed and no additional alternatives have been included in the Lead Agency's analysis. As a result, even before the DEIR/S was released, it is evident that critical decisions (e.g., exclusion of any subsequently identified alternatives from meaningful consideration) and key determinations had already been made about the proposed action. 228

As specified in the FHWA's "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); Opportunities for State and Other Qualifying Agencies to Gain Authority to Toll Facilities Constructed Using Federal Funds," as issued on January 6, 2006, "[a] public authority that wants to request tolling or pricing authority, or funding, is asked to submit an Expression of Interest to the Tolling and Pricing Team in care of the FHWA Office of Operations in Washington, D.C." The DEIR/S states that "an Expression of Interest in Tolling Authority was submitted to FHWA in July 2010, which is currently being reviewed" (emphasis added) (p. 1-19). Since that document has not be included in the DEIR/S, it is not possible to determine what statements are contained therein, to what extend such submittal constitutes a pre-determination on the part of any public agency, or the relevancy of that document to the proposed action. The OCTA's submission of an "Expression of Interest" does, however, constitutes a formal request for tolling or pricing authority for the I-405 Freeway and constitutes evidence of a possible pre-determination (prior to the completion of the CEAQ/NEPA process) 229

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of a particular course of action. The City, therefore, requests that a copy of that document be included in the Lead Agency's written response to these comments. 230

As further specified in the FHWA's "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); Opportunities for State and Other Qualifying Agencies to Gain Authority to Toll Facilities Constructed Using Federal Funds," an application for tolling authority shall include "[a] description of how, if at all, any private entities are involved either in the up-front costs to enact tolling, or the cost sharing or debt retirement associated with revenues." Although the application was submitted prior to the release of the DEIR/S, absent from the DEIR/S are any statements concerning "how, if any all, any private entities are involved" or are likely to be involved "in the up-front costs to enact tolling, or the cost sharing or debt retirement associated with revenues." Since it might result in additional undisclosed impacts, the planned or potential implementation of a "public-private partnership" (P3), including consideration of a "design-build" agreement, likely constitutes a critical (but undisclosed) component of the proposed action. 231

In addition, as indicated in the RIM, included in the CIA, in a memorandum from Caltrans' Robert Enriquez (Branch Chief, Right of Way Utilities, Local Programs) to Smita Deshpande (Environmental Branch Chief), Ahmad Hindiyeh (Project Manager), and Matthew Cugini (Engineering Manager), as published on State letterhead and dated February 14, 2011, the Department stated: "It has been determined there is no significant impact to owners, tenants, businesses, or persons in possession of real property to be acquired who would qualify for relocation assistance benefits or entitlements under the Uniform Relocation Assistance and Real Property Act of 1970, as amended" (emphasis added)

6.0 CEQA/NEPA COMPLIANCE

6.1 CEQA Compliance

As stipulated under CEQA: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant" (14 CCR 15125[a]).

In Communities for a Better Environment v. South Coast Air Quality Management District (2010), the court states that "[n]either CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence." In Madera Oversight Coalition v. County of Madera (2011), the court added that "a baseline. . .must reflect existing physical conditions" and "lead agencies do not have the discretion to adopt a baseline that uses conditions predicted to occur on a date subsequent to the certification of the EIR." However, in Pfeiffer v. City of Sunnyvale City Council (2011), the court found that "appellants contention that a traffic baseline is limited to existing conditions lacks merit because. . .the California Supreme Court has instructed that predicted conditions may serve as an adequate baseline where environmental conditions vary." Based on these somewhat contradictory rulings, a clear understanding of what

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constitutes the project's "baseline" is important since it serves as the basis for assessing the physical changes to the environment predicated by the proposed action.

The Lead Agency states that the "existing condition" (i.e., baseline) includes "Project EA 0J440K, which would provide continuous ingress and egress from the HOV lanes on the entire length of I-405 in Orange County" (S-10). However, a wide range of other "baseline" conditions are also represented in the DEIR/S. As evidence of an inconsistent "baseline" condition:

(1) "The existing condition is the 'CEQA Baseline' condition" (p. 4-28).
(2) The Traffic Study defines the "baseline" as the "No Project Alternative," inclusive of the WCC (i.e., "No Build (Baseline) Alternative Analysis. The No Build Alternative assumes that no improvements have been made to I-405 with the exception of improvements related to the West County Connectors Project, as described in Section 1 of this report. The following analysis is based on the assumption that I-405 general purpose lanes, HOV lanes, ramps, and collector-distributor geometrics are identical to the Existing Condition geometrics," p. 2-41).
(3) The traffic section defines the "baseline" as Year 2009 traffic conditions (i.e., "Existing (CEQA Baseline) Traffic Conditions – Year 2009," 3.1.6-2).
(4) The air quality analysis defines the "baseline" as "no additional lanes or interchange improvements" (i.e., "The Project Baseline conditions under the No Build Alternative would provide no additional lanes or interchange improvements to the I-405 corridor," p. 3.2.6-50).
(5) The CIA defines the "baseline" as "no additional lane or interchange improvements," except for the WCC and the "Costa Mesa Freeway Improvements" (i.e., The No Build Alternative provides a "baseline" for comparing impacts associated with the build alternatives. The baseline conditions under the No Build Alternative would provide no additional lanes or interchange improvements to the I-405 corridor. The project area would continue to operate with no additional improvements with the exception that the two earlier committed projects (SR-22 West County Connectors [WCC] Project and the Costa Mesa Freeway [SR-55] Improvements would be implemented)," p. S-2).

As a result, it is not possible to know what the "baseline" conditions are, in fact, purported to be. Absence a clear and consistent description of the environmental baseline, it is not possible to accurately characterize the potential impacts attributable to the analyzed alternatives.

In addition, throughout these comments, the City has sought to raise numerous CEQA compliance issues. For brevity, those issues are not again presented herein. There non-inclusion under this heading is not, however, intended to suggest that no CEQA compliance issues have been identified as a result of the City's independent review of the DEIR/S.

6.2 NEPA Compliance

As indicated in the I-710 Corridor DEIR/S: "Per Federal statute, unless otherwise excepted, all Interstate highways must be toll-free. However, current exceptions relating to tolling of Interstate highways include Value Pricing Pilot Program; Express Lanes Demonstration Project; the Interstate System Reconstruction and Rehabilitation Pilot Program; and the Interstate System Construction Toll Pilot Program. Should Alternative 6C [tolling alternative] be selected as the preferred alternative, tolling would be implemented pursuant to one of these exceptions" (pp. ES-11 and 12). Assuming "federal statute" applies equally to the I-405 and I-705 Freeways and that both roadways are part of the same "Interstate highway" system," it can be assumed that

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the same prohibitions and exceptions apply equally to both projects. Absent from the DEIR/S is any discussion of those four options. If so prohibited, the Lead Agency needs to inform stakeholders how federal authorization will be obtains so that the accompanying statute and regulations can be independently examined to determine both relevancy and eligibility.

As indicated in the FHWA's "Congestion Pricing and NEPA: Environmental Benefits and Considerations" (November 2008): "A major challenge of congestion pricing is determining the level of public involvement. Public opposition poses a significant risk to the implementation of congestion pricing, so it is important that the public and elected officials, who may have their own reservations about congestion pricing, discuss the potential for pricing early in the NEPA process." The FHWA further notes that "transportation agencies should consider pricing during the planning stage of project development, before projects begin to go through the NEPA process. If this is not possible, it would be prudent to introduce pricing when determining the project's purpose and need, to help identify any appropriate pricing and managed-lane techniques. Since pricing and managed-lane techniques often encourage higher occupancy in vehicles, framing the purpose of a project in terms of passenger volume as opposed to vehicle volume can also open the discussion for pricing mechanisms. Alternatively, the project's purpose could be identified as reducing passenger delay or variability of travel times" (emphasis added).

As indicated in the American Association of State Highway and Transportation Officials' (AASHTO) "Practitioner's Handbook: Managing the NEPA Process for Toll Lanes and Toll Roads" (July 2006): "The fundamental NEPA requirements for a toll road project are no different from those applicable to any other project. But the introduction of tolling concepts into a NEPA study creates a series of new issues that give rise to new challenges for project teams. Many of these issues relate to the interplay between the NEPA process and other decision-making arenas, such as the transportation planning process, which precedes NEPA, and the financing and procurement process, which may overlap with or follow NEPA" (p. 2). As further indicated by the AASHTO: "The evaluation of tolled alternatives requires consideration of the effect of tolling on low income users of the transportation network. This analysis is needed in order to satisfy the requirements of the Environmental Justice executive order (E.O. 12898), which requires consideration of a federal action's potential for 'disproportionately high and adverse' effects on minority and low-income populations. Methodologies for considering a project's potential effects on low-income users are continuing to evolve, and should be considered on a project-by-project basis. Depending on the results of the impacts analysis, it may also be appropriate to consider potential measures for mitigating the effects of tolling on low-income users" (emphasis added) (p. 6).

Environmental justice considerations were not addressed in the DEIR/S (i.e., "Build alternatives would not result in environmental justice impacts," p. 3.1.1-30). With regards to potential environmental justice impacts associated with the proposed action, the Lead Agency states that there are "none" (CIA, Table S-1, p. S-4). **232**

Tolling has the potential to affect traffic volumes and, thus, has the potential to affect impacts that are directly dependent on traffic volumes. These types of impacts generally include air quality, noise, and traffic congestion on existing roads. For example, an important issue when considering a tolled alternative is the potential for the toll to divert traffic to alternative routes. One possible approach is to present data (level of service, traffic volumes, etc.) at selected points on the local road network, in addition to presenting traffic data showing operations on the

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toll road itself. If toll-related diversions would necessitate improvements to other roads, those issues also should be considered" (Ibid.).

In addition, throughout these comments, the City has sought to raise numerous NEPA compliance issues. For brevity, those issues are not again presented herein. There non-inclusion under this heading is not, however, intended to suggest that no NEPA compliance issues have been identified as a result of the City's independent review of the DEIR/S.

7.0 ADDITIONAL ALTERNATIVES

Under the mandate of Measures M/M2, OCTA shall seek to "make best use of available freeway property" (Measure M2). Any discussion of a reasonable range of alternatives, therefore, needs to be premised on defining "best use." The City posits that "vehicle throughput" and "relative speed" are neither the appropriate nor only yardsticks against which "best use" can be defined. 233

Absent from the project's declared P&N and Lead Agency established objective is any reference to Measures M/M2. As such, the Lead Agency cannot limit and the DEIR/S cannot be bound to only those alternatives that can be argued as furthering the advancement of those actions identified by the voters of Orange County. CEQA and NEPA requires that the State and federal lead agencies act independently and select a range of alternatives that further the objectives of CEQA and NEPA and not solely the self-formulated objectives of the project proponent.

Even if the funding for the proposed action is linked, in whole or in part, to Measures M/M2, at the June 25, 2012 of the OCTA Board of Directors, "OCTA attorney Ken Smart said that Measure M can be amended as long as the entire OCTA board, as well as the tax payer committee, has a two thirds vote" (Molina, Alejandra, Orange County Register, Streetcars, 405 Widening: Adjusting Measure M, July 3, 2012). As such, "best use" and not available funding constitutes the factual bases for the formulation of a reasonable range of project alternatives.

It is not the City's intent to discourage the investment of public funds benefitting the residents and business community within Seal Beach, Orange County, or the SCAG region. These, however, are fugal times where both individual households and government alike need to diligently consider discretionary spending and optimize the public's returns on expended funds. In defining the project's "objectives" only in terms of investment in new lane-miles on the I-405 Freeway, the Lead Agency never presents the more significant and more varied goals of optimizing public investment in transportation facilities and optimization of system performance, thus leading to a broader examination of a wider range of alternatives. 234

As indicated in the CTC Needs Assessment, "California's transportation system is in jeopardy. Our aging infrastructure includes roads, highways, bridges, public transit vehicles and facilities, passenger and freight rail, airports, harbors, and international ports of entry. Streets and highways carry huge amounts of traffic, and they absorb continual wear from heavy trucks and other vehicles. Other transportation infrastructure is called upon to satisfy increasing demands for public transit and to move people and goods by air and sea, along rail lines, and across borders at United States ports of entry. At the same time, the costs to preserve the infrastructure that serves these needs are soaring, even though construction bids are lower than they have been in years. Ongoing budget shortfalls have forced agencies to defer maintenance, leading to roads and bridges that are in worse shape by the time they are rehabilitated. Investments to preserve transportation systems simply have not kept pace with the demands on them, and this underfunding has led to the decay of one of California's greatest assets. As the

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transportation system grows increasingly unreliable, the state will become less attractive to businesses, residents, and tourists, exacerbating our revenue problems at a time when we can least afford it. Preserving these systems is an essential investment" (p. 3-4). "Every piece of transportation infrastructure has an expected service life, but these components only will achieve their expected life span when they are properly maintained. By failing to invest in preserving these expensive assets, we fail to fully benefit from the initial investment that taxpayers make. . .Unfortunately, deferred maintenance because of funding shortfalls has caused many elements of the transportation system to fall into poor condition, and they now require expensive reconstruction to bring them back to acceptable operating conditions" (p. 3-8).

The CTC Needs Assessment demonstrates that the State does not have sufficient resources or revenues to fund all its transportation needs. As a result, prudent fiscal management would suggest that prioritization of funding allocation is needed. Arguably, the preservation and maintenance (i.e., preventive maintenance, rehabilitation and reconstruction, and regulatory mandates) of existing transportation infrastructure and investments in public transit (including transportation demand management) should receive a higher priority that non-critical new project development (system expansion). Since the manner in which a question is posited both leads to and limits the range of answers presented, the question that should be asked with regards to the proposed action is not "how many and what type of new lanes should be added to the I-405 freeway" but "how should up to $5.8 billion in public funds be expended to maximize transportation-related and other societal benefits?" 235

Additionally, it is noted that the proposed action is neither included in Caltrans' "2010 Interregional Transportation Improvement Program" (February 12, 2010) (2010 ITIP) nor does it respond to the objectives and system priorities outlined in Caltrans' "Interregional Transportation Strategic Plan: A Plan to Guide Development of the Interregional Transportation System" (June 1998) (1998 ITSP). That document serves to consolidate and communicate key elements of the State's ongoing short-range and long-range planning and serves as a counterpart to the "Regional Transportation Plans" prepared by the State's 43 regional transportation planning agencies. The six key objectives of the 2008 ITSP include: (1) Complete a trunk system of higher standard (usually expressway/freeway); (2) Connect all urbanized areas, major metropolitan centers, and gateways to the freeway and expressway system to ensure a complete Statewide system for the highest volume and most critical trip movements; (3) Ensure a dependable level of service for movement into and through major gateways of Statewide significance and ensure connectivity to key intermodal transfer facilities, seaports, air cargo terminals, and freight distribution facilities; (4) Connect urbanizing centers and high growth areas to the trunk system to ensure future connectivity, mobility, and access for the State's expanding population; (5) Link rural and smaller urban centers to the trunk system; and (6) Implement an intercity passenger rail program (including interregional commuter rail) that complies with federal and State laws, improves service reliability, decreases running times, and reduces the per passenger operating subsidy.

That segment of the I-405 Freeway examined in the DEIR/S has neither been identified as a "high emphasis route" nor a "focused route" in the 1998 ITSP. In addition, the proposed action has not been included on the "2010 ITIP Highway Project List" in the 2010 ITIP.

With regards to transit, the Lead Agency seeks to employ a "demand management" strategy during construction in order to reduce construction-term impacts. As described in the RCS: "This strategy involves promoting the use of public transit, ride sharing and variable work hours to reduce the amount of traffic using the freeway and roadways in and around construction

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zone. Through the public awareness campaign, large employers will be urged to consider staggered working hours and encourage their employees to use the OCTA transit system and rideshare resources which includes six park-and-ride lots along the I-405 corridor. Incentive programs such as free transit tickets and free/discounted merchant coupons for rideshare participants could be used to attract participants" (RCS, p. 24; TDM, p. 14).

Unless merely a token effort presented solely to give stakeholders the impression that such a "strategy" could produce tangible results, without any realistic expectations on the part of either the Department or OCTA that such activities could reduce traffic, it is regrettably that this program is not presented as part of a long-term, multi-faceted effort to reduce congestion. If "demand management" actually works, then it must be part of the Lead Agency's arsenal to address not only temporary but also on-going congestion issues. As a result, the Department should document to what extend a "demand management strategy" may aid in reducing congestion during construction and more broadly apply that or a expanded strategy as an alternative to the proposed action.

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7.1 System Management Alternative

As perceived by the City, one of the major short-coming of the proposed action is its singular focus on freeway widening (to the detriment of all other transportation system and management alternatives). As outlined in a memorandum from Joan Sollenberger, Chief, Division of Transportation Planning and Cindy McKim, Chief Financial Officer to Chair and Commissioners (Subject: Report on Corridor System Management Plans), dated February 19, 2009, Caltrans' emphasizes "the importance of CSMPs [corridor system management plans] in restoring mobility to California and sustaining mobility gains" (p. 1) As specified therein:

> Corridor System Management Plans (CSMPs) are plans to comprehensively manage and operate urban transportation corridors across jurisdictions and modes. The plans include all major transportation elements in the corridor, such as freeways, major parallel local arterials, and transit and rail. The goal is to maximize total corridor productivity and performance by providing the highest sustained throughput of people and freight, while considering all corridor elements. . . The plans are supportive and complementary to meeting the goals and objectives of the California Regional Blueprint efforts, compliance with Assembly Bill (AB) 32 and Senate Bill (SB) 375 to reduce greenhouse gas emissions, and of the Smart Mobility Framework. The plans will restore and sustain mobility while improving the environment by encouraging smart land use development, compact housing, and increased modal trips (Attachment, p. 1).
>
> The importance of CSMPs to improve and sustain California's mobility can not be overstated. The plans are the way the California Department of Transportation (Department), with regional and local partners, must plan for corridor system management and operations now and in the future. The plans are based upon the concepts presented in the Department's Transportation Management System (TMS) Master Plan that was required by the California State Legislature in 2004. These concepts and this approach are the foundation of the transportation component of the Governor's Strategic Growth Plan (SGP). This approach will restore productivity to the State's transportation system, improve corridor throughput, improve travel time reliability across all corridor elements and ensure economic growth. The SGP is performance-based and outcome-driven. It targets a significant decrease in traffic

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> congestion below today's levels. This will occur even while accommodating growth in population and the economy over the decade with comprehensive system management.
>
> The Department and its regional and local partners recognize that addressing congestion requires a multi-pronged approach, referred to as system management. The approach includes: adding new capacity, maintaining its infrastructure, investing in and encouraging the use of alternative modes (such as transit and rail), encouraging smart land use, transportation management systems, incident management, and other strategies. . . System management can significantly improve productivity of all elements of the transportation corridor, improving travel times and reliability for all travelers" (emphasis added) (Attachment, pp. 2 and 3).

It is evident that a CSMP would allow for the attainment of the P&N and project objective, while concurrently focusing on the transportation system as a whole rather than as disconnected and unrelated parts. While the proposed action could become a component of a broader system management strategy, it cannot be presented as the only available solution to reduce congestion.

7.2 Other Corridor Alternatives

As described in the FHWA's "Guidance on Using Corridor and Subarea Planning to Inform NEPA" (April 5, 2011):

> States, metropolitan planning organizations (MPOs), and local governments have primary responsibility for transportation planning. The transportation planning process required by 23 U.S.C. §§ 134 and 135 and 49 U.S.C. §§ 5303-5306 sets the stage for future development of transportation projects. Federally-funded highway and transit projects originate in the statewide and metropolitan transportation planning processes. Corridor and subarea plans are conceptual level planning studies, which focus on a particular corridor or region and can help determine where there is a transportation need. The transportation regulations governing the use of corridor and subarea studies identify products from this type of planning that may be used to inform NEPA, including, the purpose and need or goals and objectives statement(s); the general travel corridor and/or general mode(s) definitions; the preliminary screening of alternatives and elimination of unreasonable alternatives; the basic description of the environmental setting; and/or the preliminary identification of environmental impacts and environmental mitigation. A State, MPO, or public transportation operator may undertake a multimodal, systems-level corridor or subarea planning study as part of the statewide and metropolitan transportation planning process. The results or decisions of this study may be used as part of the overall project development process consistent with NEPA and FHWA regulations. Often, since it happens later in the project development process, the environmental analysis done to meet NEPA requirements for transportation projects is largely disconnected from the planning process. This may result in planning decisions being overlooked or disregarded under NEPA. When decisions are revisited, it can lead to misapprehension, duplication of work, added expense, or confusion for stakeholders.
>
> Corridor and subarea plans are conceptual level planning studies, which focus on a particular corridor or region and can help determine where there is a transportation

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need. . .more detail than area-wide or regional plans. Subarea studies are similar to corridor studies, with the distinction that a subarea study generally addresses more of the total planning context and the broader transportation network for the area (emphasis added) (pp. i and 8).

As indicated in Caltrans' RCR for the I-405 Freeway, the "I-405 serves several purposes in Orange/Los Angeles Counties. It is a bypass route to I-5. It is also an inter-county and intra-regional route which intersects two Interstate Routes (I-5 and I-605) and five State Routes (SR-133, SR-55, SR-73, SR-39, and SR-22) in Orange County. It is a major goods movement facility into and out of Orange and Los Angeles Counties along with significant amount of recreational and commuter trips" (p. 7). Under the heading "Federal/State Functional Classification," the RCR further states that the:

I-405 is classified as an Interstate Facility (P1P) throughout Orange County. Following are other designations which may affect planning and/or operations on I-405.

Designation	Limits
National Highway System (NHS)	Entire length of I-405
Subsystem of Highway for the Movement of Extra Legal Loads (SHELL)	Entire length of I-405
National Network for STAA Trucks	Entire length of I-405
12 Foot Wide Arterial System	Entire Length of I-405
Lifeline Route	8.74/24.18 (SR-55 to L.A. Co. Line)

Although never represented as such, the only segment of the I-405 Freeway examined in the DEIR/S relates to the "lifeline route." Other corridor alternatives relate to: (1) that segment identified as a "Interstate Facility (P1P) (i.e., the entire length of the I-405 Freeway); (2) that segment included in the "National Highway System" (i.e., the entire length of the I-405 Freeway); (3) that segment included in the SHELL (i.e., the entire length of the I-405 Freeway); and/or (4) that segment included in the "12 Foot Wide Arterial System" (i.e., the entire length of the I-405 Freeway).

As has occurred elsewhere in the State, Caltrans should examine the I-405 Freeway, including that segment extending through Los Angeles County, as an entire corridor and should ascertain the full extend of improvements required throughout that corridor in order to assess future year conditions, improvement needs, and funding priorities. It would appear impossible to successfully accomplish long-range transportation planning "14-miles" (p. 2-20) or "15-miles" (AQR, p. 51) or "16 miles" (p. 1-12) at a time with self-imposed blinders concerning what is occurring or what should occur on the opposite ends of that short-length section. Similarly, it is difficult to envision how transportation planning can occur in the absence of a broader discussion of other interrelated planning elements (e.g., land use). 237

In addition, as indicated in the FHWA's "Federal-Aid Highway Program Guidance on High Occupancy Vehicle (HOV) Lanes" (August 2008), "degradation" was defined as the following: "The minimum average operating speed is defined at Section 166(d)(2)(A) as 45 miles per hour (mph), for an HOV facility with a speed limit of 50 mph or greater, and not more than 10 mph below the speed limit for a facility with a speed limit of less than 50 mph. Section 166(d)(2)(B) provides that an HOV facility is considered degraded if it fails to maintain a minimum average operating speed 90 percent of the time over a consecutive 180-day period during morning or evening weekday peak hour periods (or both for a reversible facility)" (Chapter IV).

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As indicated in Caltrans' "California HOV/Express Lane Business Plan 2009" (May 15, 2009), "nearly 50% of the HOV lanes in the state experience periods of degradation in the peak hour according to the federal definition – meaning that average speeds of 45 mph speed or lower have been measured more than 10% of the time" (p. 9). As of July 2008, the existing HOV lane system had 1,424 existing lane-miles and 124 lane-miles under construction. Future expansion of the network includes 269 programmed lane-miles and 974 proposed lane-miles planned by State and local agencies (p. 5). More than 700 lane-miles of HOV facilities in California are now "degraded." By focusing solely on a 16-mile freeway segment, the Lead Agency ignores the broader problem the proposed action purports to address. 238

In addition, OCTA/LACMTA's "Orange and Los Angeles Intercounty Transportation Study – Conceptual Alternatives Report" (July 16, 2008) (OC/LA Intercounty Study) noted that "[a] majority of the freeway segments in the OC/LA study area are forecast to operate at a poor level of service during the AM and PM peak periods in the Year 2030. . .Traffic congestion is already a substantial constraint on mobility for all freeways in the OC/LA study area. Forecasted increases in traffic volumes, delay, and travel demand for the Year 2030 condition will only further exacerbate the pressure on the freeway network serving Los Angeles and Orange counties. In 2030, the majority of freeway segments in the OC/LA study area are forecast to operate at poor levels of service (LOS E or F). A range of improvements for the freeway network needs to be explored to meet forecast travel demand. Improving the operating efficiency of the existing freeway infrastructure will be important in order to maximize traffic flow. However, operational improvements alone will not be able to serve forecasted Year 2030 traffic volumes. Additional freeway capacity is necessary to serve anticipated traffic volumes and to ensure the continued economic growth of Southern California" (pp. 6-7).

Freeway system improvements identified in the OC/LA Intercounty Study (p. 13) include:

- I-405 Freeway. I-405 freeway improvements consist of adding one general purpose lane in each direction and auxiliary lanes in several locations in Orange County from Brookhurst Street to the I-605 freeway and adding a second HOV lane in each direction from the SR-22 freeway to the I-605 freeway.
- SR-22 Freeway. Improvements on the SR-22 freeway include constructing HOV direct connectors to the I-405 freeway as part of the West Orange County Connectors project.
- I-605 Freeway. Improvements on the I-605 freeway include improving freeway access and arterial connection in the communities of Cypress and Los Alamitos. New freeway-to-freeway direct connector HOV ramps to I-405 are also planned as part of the West Orange County Connectors project.
- I-5 Freeway. Improvements on this freeway include adding one general purpose lane and one high occupancy vehicle (HOV) lane in each direction in Los Angeles County from Rosemead Boulevard to the OC/LA county line, as well as adding one general purpose lane and one HOV lane in each direction in Orange County from SR-91 to the OC/LA county line. The section between SR-57 and SR-91 in Orange County is also scheduled to be improved through a restriping and minor capacity enhancement that would result in the addition of one more lane in each direction. This additional lane would widen the freeway to a total of 12 lanes (six in each direction) and could be either an additional general purpose lane or an additional HOV lane.

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- SR-57 Freeway. Improvements on the SR-57 freeway including the addition of a new northbound truck climbing lane from Lambert Road to Tonner Canyon Road and adding a new northbound general purpose lane from Orangewood Avenue to Lambert Road. Both projects would occur in Orange County. The 2030 Baseline projects also include reconfiguring the existing interchange at Lambert Road and adding a southbound off-ramp lane at that location. The construction of HOV drop ramps to Cerritos Avenue is also included.

- SR-91 Freeway. Baseline improvements on SR-91 include the addition of one westbound general purpose lane in Orange County from I-5 to SR-57.

- SR-60 Freeway. Baseline improvements for SR-60 include the addition of one HOV lane in each direction in Los Angeles County from I-605 to Brea Canyon Road.

One of the "key issues" identified in the OC/LA Intercounty Study is the need for interagency coordination. The study states that "[i]ncreased coordination between agencies is essential for the successful implementation of transportation improvements. There are also significant opportunities for cities located along the county line to use this study effort to increase coordination and cooperation on local transportation issues" (p. 7). Although published in 2008, it is noted that the OC/LA Intercounty Study is neither referenced in nor is its needs assessment and/or alternatives analysis addressed in the DEIR/S. Similarly, no evidence of "interagency coordination" between OCTA and LACMTA is presented in the DEIR/S. **239**

Caltrans' "Corridor System Management Plan (CSMP) – Orange County SR-22 Comprehensive Performance Assessment and Causality Analysis, Final Draft" (May 4, 2009) was prepared as part of the "Orange County State Route 22 Corridor System Management Plan" (CSMP) development process, as required by the California Transportation Commission (CTC) for corridors that have received funding from the Corridor Mobility Improvement Account (CMIA) approved by the voters in 2006. The CMIA will partially fund the construction of HOV connectors between the SR-22 and I-405 Freeways, as well as the I-405 and I-605 Freeways. Since it has already been delineated as part of a previous planning process, those freeway segments comprising the CSMP constitutes a logical "corridor" (including the roadway facility, major interchanges and relative demands at these interchanges, rail and transit services along the freeway facility, major intermodal facilities around the corridor, and special event facilities/trip generators) for the purpose of the environmental assessment for the proposed action.

As described therein, "[t]he study corridor includes portions of three state routes, SR-22, I-405, and I-605 in Orange County. The corridor begins at an interchange involving all three freeways at the Los Angeles County border. From there, the corridor runs east along SR-22 (Garden Grove Freeway) to SR-55. The corridor also runs southeast along I-405 (San Diego Freeway) unit it reaches I-5 (Golden State Freeway) just outside Irvine. The corridor includes a short, one-mile section of I-605 (San Gabriel River Freeway) as it heads north from the Los Alamitos Curve (SR-22/I-405/I-605) interchange to the Los Angeles County border" (p. 18).

Alternatively, if the OCTA has only "$500 million" dollars available and the estimated cost of the proposed 16-mile improvements are projected at "$1.7 billion," to the extent that the Lead Agency seeks to define the project as containing "independent utility," then a logical corridor-based alternative is to define the project not as an "approximately 16-mile" (p. 1-23) corridor but as a 4.7-mile corridor ($500 million/$1.7 billion x 16 miles = 4.7 miles) constructible with the funding now available. **240**

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7.3 Performance-Based Investment Strategies

As indicated in Caltrans' RCR, with regards to the formulation of improvement plans for the I-405 Freeway, the Department notes that the proposed route "concept calls for a new strategy emphasizing system management and operational improvements of our existing freeway system in a way that optimizes the carrying capacity referred to as Traffic Operations Strategies (TOPS). It is an operational strategy that will maximize the utilization of the existing urban freeway system through performance-based investment strategies. Currently, the district with the cooperation of the other southern California districts is developing a system wide concept report for Southern California. If fully implemented, the concept for this route could improve to a Level of Service (LOS) of 'E' which will reduce delay to motorists and the trucking industry" (Summary). As indicated therein: "The RCR contains the Department's goals for the development of each route in terms of Level of Service (LOS). One of the Department's goals is the proposed concept of Traffic Operations Strategies (TOPS). The RCR broadly identifies the nature and extent of improvements needed to reach those goals" (p. 2).

Under the proposed action, the Department's approach appears to be based on a planning concept that starts with "what can we squeeze in" or "what does not appear to cost too much" (although the "preferred project" presently exceeds available funds by 340 percent) and then determining what the level of service become (in this case continuance of primarily LOS "F" conditions). A performance-based approach would start with a specific performance goal (e.g., LOS "E" conditions in all GP lanes) and determining what freeway-improvement and other actions are needed for its attainment. As indicated in the RCR:

> TOPS was proposed by Caltrans Districts 7, 8, 11 and 12 to maximize utilization of the existing urban freeway system through performance-based investment strategies. TOPS recommends improvements for this route, including programming, funding and comprehensive system management. A system wide concept report for Southern California is being developed. Full implementation of TOPS will take place over a 5-10 year span depending on the level of improvement required and available funding. As a result of TOPS, the concept for this route anticipates Level of Service (LOS) of "E" or better with minimal delay to motorists and the trucking industry.
>
> In the past, Caltrans Route Concept Reports focused on adding mixed flow or high occupancy vehicles lanes (HOV) in locations were the existing/projected traffic shows LOS "F" (stop and go condition). Widening alone is no longer the best solution to meet the existing and projected demand on the system.
>
> Transportation professionals, looking for better ways to improve the overall performance of the system, believe the most cost effective and efficient solution is to maximize capacity on the existing facility and maintain a steady flow of traffic by implementing a series of traffic operations strategies. For example, freeway capacity for a 4-lane freeway is 9,200 vehicles per hour (2,300 vehicles per lane). During peak congestion with stop and go conditions, freeway capacity is reduced to about 6,000 vehicles per hour (1,500 vehicles per lane). If smooth, free flowing operational conditions could be maintained throughout the system, a freeway would carry about 30% more vehicles than a congested facility (emphasis added) (pp. 20-21)

Are freeways and arterial streets designed for peak or non-peak-hour periods? What are the specified corresponding "level of service standards" (Ordinance No. 2)? What freeway and non- **241**

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freeway improvements and other actions would be necessary to generally achieve LOS "E" conditions along the designated "corridor," based not on a 100 percent frequency but based on a reasonable and specified percentile? **241**

7.4 VMT Reduction Alternatives

As indicated in Table 7 (Induced Travel Demand in Increased Vehicle Miles Traveled) herein, the Lead Agency acknowledges that the proposed freeway improvements will increase VMT by 1,013,000 miles/year. Increasing VMT adds both to congestion and mobile source emissions. As a result, other alternative strategies could include those that decrease existing or diminish the projected growth of VMT over the planning period.

7.5 Operational Alternatives

A wide range of operational alternatives should be considered by the Lead Agency. A number of distinct operational strategies are identified below.

- **TMS master plan**. As indicated in "California Interregional State Highways – Major Planning Considerations, Trends, and Implications" (Caltrans, January 2010):

  > Caltrans, in collaboration with regional and local partners, relies on the development of the CSMPs to manage corridor mobility and operations now and in the future. The CSMPs are based upon the concepts in Caltrans' Transportation Management System (TMS) Master Plan that was required by the California State Legislature in 2004. The TMS Master Plan is the foundation of the transportation component of the Governor's Strategic Growth Plan (SGP). This system management approach will restore productivity to the State's transportation system, improve corridor throughput, enhance travel time reliability across all corridor elements, and support economic growth. The TMS Master Plan identifies three principal elements that will help restore productivity. These are: traffic control (such as ramp meters and improved signal timing on local arterials), incident management, and traveler information. These elements must be built on a strong foundation of detection in order to measure freeway performance. Aggressive deployment of these TMS elements could, on the freeway system alone, increase productivity by 20 percent, reduce projected congestion by 20 percent, and improve travel time reliability by 10 percent (p. 3).

  Absent from the DEIR/S is any reference to either Caltrans' TMS Master Plan or to its "three principal elements" (i.e., traffic control, incident management, and traveler information). Since those elements have the potential to increase productivity and reduce congestion (by 20 percent) and improve travel time reliability (by 10 percent), their implementation would appear to allow for the cost-effective attainment of the Lead Agency's P&N and project objective.

- **Conversion of existing GP lanes to HOV lanes**. Section 21655.5 of the California Vehicle Code states that Caltrans and local authorities may "authorize or permit exclusive or preferential use of highway lanes for high-occupancy vehicles" provided that engineering studies are completed on safety, capacity, and delay. Similarly, Section 149 of the California Streets and Highways Code states that "designated lanes on existing

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highways" may be authorized for bus only or bus and HOV use. Despite that authorization, unaddressed is the relatively inexpensive option of converting existing general purpose (mixed-flow) lanes to HOV lanes.

- **Dual HOV lanes**. In addition, the DEIR/S states that "[a] 'build' option that has been considered is provision of dual HOV lanes in each direction. This option was considered during the MIS phase of project development and eliminated from further consideration as described in Section 2.2.5, Eliminated Alternative Developed after PSR/PDS" (p. 3.1.6-82). There is no "Section 2.2.5" with that title or subject content in the DEIR/S. Section 2.27 (Alternatives Considered but Eliminated from Future Discussion) (p. 2-27) does not appear to includes a discussion of a "dual HOV lane" alternative.

  The Lead Agency asserts that the proposed action is consistent with the (outdated) RTP. However, as indicated in the "Congestion Management Strategy" component of the 2012 RTP/SCS, the following item is included in the "CMP Toolbox": "An HOV lane is a dedicated lane(s) along a freeway or arterial dedicated to vehicles with more than one or two occupants. Increases corridor capacity while at the same time provides an incentive for single-occupied drivers to rideshare. On average, a HOV lane in Los Angeles County accommodates 1,300 vehicles or 3,300 people per hour during peak periods, and the county HOV system serves approximately 331,000 vehicle trips or 780,000 person trips per day" (emphasis added) (p. 27). In furtherance of that strategy, both a "dual HOV lanes in each direction" alternative and prohibition on use of HOT lanes by SOVs considered potentially viable alternatives that warrant the subsequent analysis by the Lead Agency.

- **Truck only toll lanes**. As reported in the Georgia State Road and Tollway Authority's "Truck Only Toll Facilities: Potential for Implementation in the Atlantic Region, Final Report" (July 18, 2005):

  > TOT [truck only toll] lanes offer a variety of potential benefits for commercial vehicles, other travelers and for transportation agencies. Such lanes can: [1] Enhance transportation options. Shippers and service providers will have the option of traveling more reliable routes in the Atlanta region, especially during peak periods. [2] Improve safety and efficiency in the road corridor. By encouraging commercial vehicles to use the TOT lanes, the mix of vehicles remaining in the freeway becomes more uniform. Thus, not as many trucks and personal vehicles will be sharing the same roadway as previously. This should improve the efficiency of travel on the road, as well as reduce the risk of truck/automobile crashes. [3] Improve freight productivity. The efficiency of freight movement in and around major metropolitan areas will likely be even more of a concern to the business community in the future. In addition, for logistics centers like Atlanta, freight mobility and productivity could become an important factor in the competitiveness of Atlanta versus other comparable regions. TOT lanes can greatly improve commercial vehicle productivity. [4] Manage congestion levels for truck travel and improve general purpose highway congestion. By imposing fees when demand levels reach capacity on TOT facilities, the level of congestion on TOT facilities is controlled. If a large number of trucks are removed from the general purpose lanes and the local road network, congestion levels might be reduced for other traffic as well. [5] Generate revenue for TOT lane operation. In order to manage traffic levels on